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# INHERITANCE TAXATION

A TREATISE ON

## LEGACY, SUCCESSION, AND INHERITANCE TAXES

UNDER

### THE LAWS OF

ARKANSAS, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, IDAHO, ILLINOIS,  
IOWA, KANSAS, KENTUCKY, LOUISIANA, MAINE, MARYLAND, MASSACHUSETTS,  
MICHIGAN, MINNESOTA, MISSOURI, MONTANA, NEBRASKA, NEW HAMPSHIRE,  
NEW JERSEY, NEW YORK, NORTH CAROLINA, NORTH DAKOTA,  
OHIO, OKLAHOMA, OREGON, PENNSYLVANIA, SOUTH DAKOTA, TENNESSEE,  
TEXAS, UTAH, VERMONT, VIRGINIA, WASHINGTON,  
WEST VIRGINIA, WISCONSIN, AND WYOMING

AND

FORMER ACTS OF CONGRESS

WITH

### FORMS

AND

### FULL TEXT OF STATUTES

BY  
PETER V. ROSS,  
of the San Francisco Bar

Author of a Treatise on Probate Law and Practice; Formerly  
Associate Editor of American State Reports.

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## PREFACE.

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Probably no system of taxation now in vogue rests upon a basis more just and equitable than does inheritance taxation; for, in reducing the amount which beneficiaries of a decedent receive, it takes of that which they, in a great majority of cases, have had no part in producing, and which they succeed to at all only by grace of the authority or government for whose support the tax is exacted. The inherent justice of this form of taxation becomes more apparent when it is viewed in the light of such special features as the exemption of gifts or estates of limited value; the imposition of higher rates, or the allowance of a smaller exemption, in the case of strangers and collateral relatives than where lineal descendants and the surviving husband or wife are affected; and the graduation of the tax rate in proportion to the value of the estate or gift—thereby adjusting the burden according to the bounty received and the ability to respond, and also according to the closeness of relationship between the parties, and hence, presumably, the degree of the right to succeed to the property.

But however commendable the taxation of inheritances may seem to the unprejudiced mind, adverse criticism, and even untempered condemnation, are not uncommon. These spring from the reluctance, manifested all but universally in mankind, to contribute to the financial support of government—a reluctance not a whit less inflexible in the presence of affluence and abundant ability to yield contribution.

It is true that in some instances injustice has been done in the collection of inheritance taxes. Thus in Illinois the widow's dower, and in California her share of the community property, have been subjected to taxation upon the death of the husband, the courts mistakenly supposing that the widow comes into these estates by virtue of the law of succession. But in other states the courts have discerned the true nature of the widow's dower and community interest, and, realizing that she is not dependent upon the law of succession for them,



have not burdened them with the inheritance tax. The injustice she has suffered in these instances, then, is due, not to the system of inheritance taxation, but to a misconception of the law of dower and community property.

An injustice is also done, perhaps, through double taxation, where the owner of personal property situated in one state dies domiciled in another, in which case the first state taxes the property because the actual situs is within its boundaries, while the latter state imposes a similar tax because the legal situs is within its jurisdiction. This practice of double taxation has been indulged to a considerable extent, and is still far from obsolete, although it has been departed from in a number of states.

But these objections, and others that possibly may be advanced, are accidental only, and do not go to the merits of inheritance taxation. It has so commended itself not only to popular thought, but to the minds of legislatures and courts as well, that it has gradually, and in recent years rapidly, been extended as a system of raising revenue, until now thirty-eight states of the Union are collecting inheritance taxes, and most of them upon both direct and collateral successions. The United States government, however, discontinued its tax in 1902.

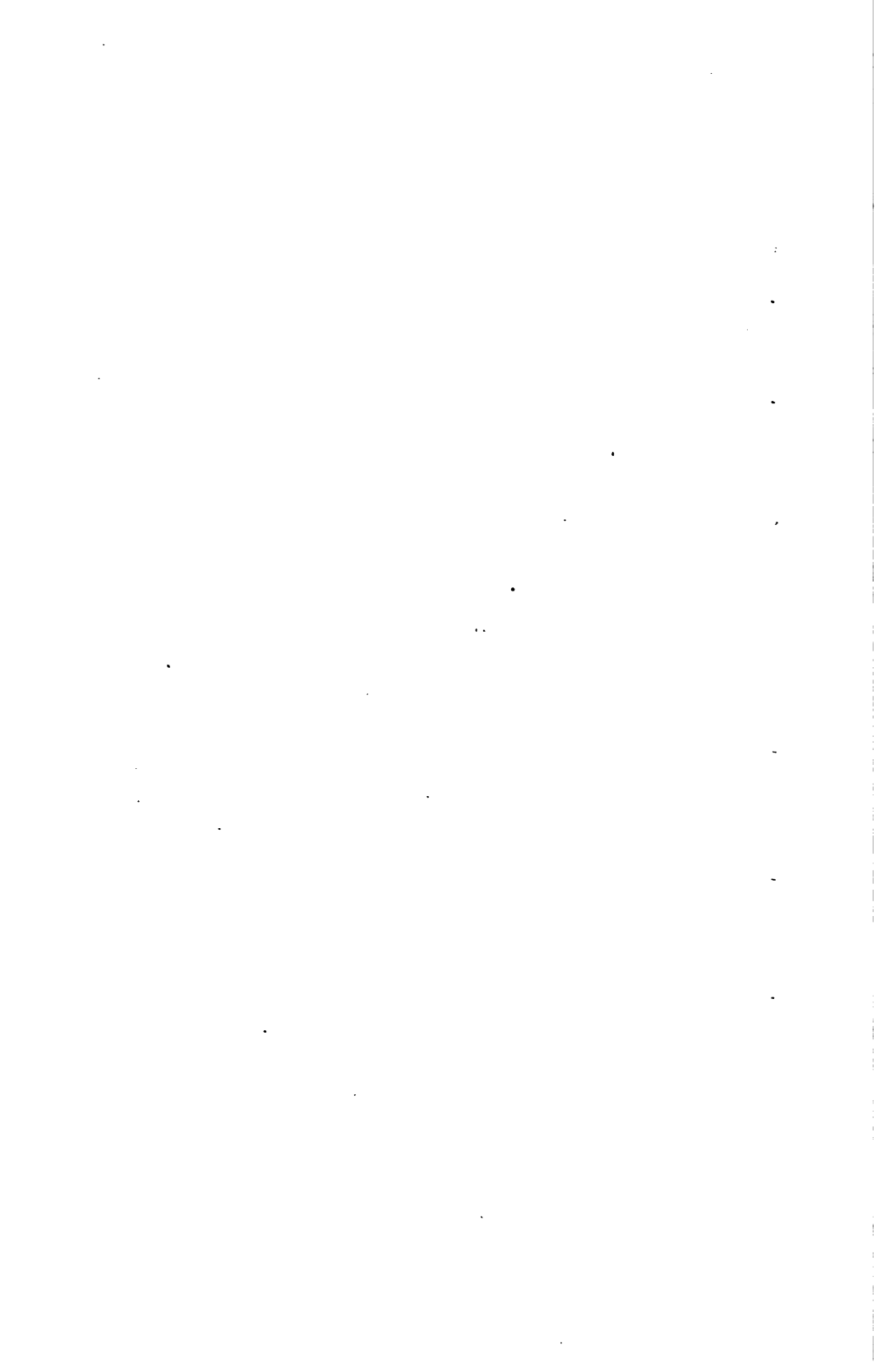
The subject, therefore, has assumed no inconsiderable importance; and the amount of law that has accumulated thereon, as evidenced by the statutes and decisions, is sufficient to make a volume of ordinary law-book size.

The volume naturally falls into three subdivisions. The first is a text or commentary based upon the decisions of all the courts of the country, both state and national. This is written in the usual text-book style, and is intended to bring out all points that have been decided, and accurately to reflect the case law as it now stands in the United States. The second part contains forms for use in the collection and enforcement of taxes. Their author is Edward H. Fallows, Esq., of the New York Bar, who has graciously consented to their use and to whom grateful acknowledgment is here made. The third part contains the inheritance tax statutes of all the states that have resorted to this system of taxation. The full text of the statutes is given as they now stand.

The book is not a local treatise. It is intended to embrace all the law on the subject to which it is addressed, both of the United States before the repeal of the war revenue act of 1898, and of the thirty-eight states of the Union that now tax inheritances. These states are: Arkansas, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

P. V. ROSS.

San Francisco, July, 1912.



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- § 488. Transfers Subject to Tax—Market Value—Lien.
- § 489. Power of Appointment.
- § 490. Classification of Beneficiaries—Tax Rates on Estates Under \$25,000.
- § 491. Rates of Taxation on Estates Over \$25,000.
- § 492. Exemptions from Taxation.
- § 493. Estates for Years or Life—Remainders and Contingent Interests.
- § 494. Bequests to Executor or Trustee.
- § 495. Time of Payment of Tax—Interest and Discount.
- § 496. Collection of Tax by Executor or Trustee.
- § 497. Sale of Property to Pay Tax.
- § 498. Payment to County Treasurer—Duty of Controller—Receipts.
- § 499. Refunding Excess Payments.
- § 500. Transfer or Delivery of Stocks, Securities, Deposits—Notice Thereof.
- § 501. Appraisers and Appraisement.
- § 502. Appraiser Taking Other Than Regular Fees—Penalty Therefor.
- § 503. Nonresidents—Jurisdiction of Court.
- § 504. Citation to Delinquent Taxpayer.
- § 504a. Proceedings by District Attorney Against Delinquent.
- § 505. Entries, Records and Reports of County Clerk.
- § 506. Costs of Proceedings Against Delinquent.
- § 507. Payment by County to State Treasurer.
- § 508. Furnishing Copy of Receipts to Persons Applying Therefor.
- § 509. Refusal of Officers to Discharge Duties—Penalty Therefor.
- § 510. Definitions of Words Used in Statute.
- § 511. Enforcement of Lien of Tax—Quieting Title.
- § 512. Repeal of Conflicting Acts.

## CHAPTER XXIX.

## ILLINOIS STATUTE.

*(Laws of 1905, p. 301; Rev. Stats. 1909, p. 1897.)*

- § 514. Transfers Subject to Tax—Rates—Exemptions.
- § 515. Estates for Years or for Life and Remainders.
- § 516. Time for Payment—Interest and Discount—Bond for Payment.
- § 517. Collection of Tax by Executor.
- § 518. Liability of Executor—Sale of Property to Pay Tax.
- § 519. Payment by Executor to County Treasurer—Receipts and Vouchers.
- § 520. Executor to Give Notice to County Treasurer of Transfers.
- § 521. Refunding Excess Payments.
- § 522. Transfer or Delivery of Stocks, Securities and Deposits—Notice.
- § 523. Refunding of Tax Erroneously Paid.



- § 524. Appraisers and Appraisement.
- § 525. Fees of Clerk—Inheritance Tax—Clerk and Attorney.
- § 526. Appraiser Receiving Illegal Fees—Penalty.
- § 527. Jurisdiction of Court.
- § 528. Citation to Delinquent Taxpayer.
- § 529. Duty of State Attorney to Collect Tax.
- § 530. Statement to County Treasurer of Unpaid Taxes.
- § 531. Allowance for Expenses Incurred.
- § 532. Record to be Kept in Office of County Judge.
- § 533. Payment by County Treasurer to State Treasurer—Receipts.
- § 534. Commissions of County Treasurer.
- § 535. Receipts for Payment of Tax.
- § 536. Proceedings to Determine Whether Transfer Subject to Tax.
- § 537. Lien of Tax.
- § 538. Contingent or Expectant Estates.
- § 539. Computation of Taxes on Expectant Estates Under Former Statute.
- § 540. Guardian for Person Under Disability.
- § 541. Transfers Exempt from Tax.
- § 542. Transfers by Deed, Instrument or Memoranda.
- § 543. Certified Copies of Papers.
- § 544. Repeal of Other Statutes.

## CHAPTER XXX.

### IOWA STATUTE.

*(Supplement Code 1907, pp. 307-314; Laws of 1909, p. 81; Laws of 1911, pp. 50-64.)*

- § 545. Transfers Subject to Tax—Rates—Persons Liable—Lien—Time of Payment.
- § 546. Exemptions from Tax.
- § 547. Deduction of Debts.
- § 548. Collection of Tax When No Administrator Appointed.
- § 549. Appointment and Qualification of Appraisers.
- § 550. Issuance of Commission to Appraisers.
- § 551. Notice of Appraisement—Returns Filed.
- § 552. Objections to Appraisement.
- § 553. Appraisement of Property—Market Value—Deduction of Debts.
- § 554. Relief from Appraisement.
- § 555. Appraisement of Deferred Estates in Real Property.
- § 556. Estates for Years or for Life and Remainders in Real Property.
- § 557. Estates for Years or for Life in Personal Property.
- § 558. Bond to Secure Payment of Tax on Deferred Estates.
- § 559. Terms and Conditions of Bonds.
- § 560. Removal of Property from State—Penalty.
- § 561. Value of Annuities, Life, Term, and Deferred Estates.
- § 562. Collection of Tax.

- § 563. Deduction of Tax from Legacy.
- § 564. Account of Executor not Settled Before Tax Paid.
- § 565. Jurisdiction of Court.
- § 566. Bequest to Executor in Lieu of Compensation.
- § 567. Legacies Charged upon Real Estate.
- § 568. Interest on Delinquent Taxes.
- § 569. Information to be Furnished State Treasurer on Demand.
- § 570. Lien Book to be Kept by Clerk of Court.
- § 571. Report of Executors—Entry of Tax Liens.
- § 572. Extension of Time for Appraisement.
- § 573. Report by Heirs to Clerk.
- § 574. Entries to be Made by Clerk in Lien Book.
- § 575. Clerk to Keep Probate Record.
- § 576. Clerk to Report Estates Subject to Tax—Fees.
- § 577. Duties of County Attorney—Compensation.
- § 578. Settlement of Conflicting Claims for Fees.
- § 579. Enforcement of Payment of Tax.
- § 580. Costs Taxed to Estates.
- § 581. Delivery or Transfer of Securities or Deposits—Notice.
- § 582. Transfers of Corporate Stock—Liability of Corporation.
- § 583. Corporations to Report Certain Stock Transfers to State Treasurer.
- § 584. Foreign Estates—Deduction of Debts.
- § 585. Property of Foreign Estates not Specifically Devised.
- § 586. Approval of Compromise Settlement.
- § 587. Unknown Heirs.
- § 588. Refund of Tax.
- § 589. Contingent Estates, Devises or Legacies.
- § 590. Definitions of Terms.
- § 591. Records to be Kept by State Treasurer.
- § 592. Repeal of Conflicting Statutes.

## CHAPTER XXXI.

### KANSAS STATUTE.

*(General Statutes of 1909, pp. 1997-2004.)*

- § 593. Transfers Subject to Tax—Rates—Persons Liable—Exemptions.
- § 594. Property Out of State or Nonresident Within State.
- § 595. Payment of Tax—Interest—Lien of Tax.
- § 596. Deposit for Payment of Tax in Case of Contingent Gift.
- § 597. Assessment of Tax—Value of Property.
- § 598. Payment of Tax on Future Interests.
- § 599. Requests to Executors in Lieu of Compensation.
- § 600. Collection of Tax by Executor.
- § 601. Legacy Charged upon Real Estate.
- § 602. Testamentary Provision for Payment.
- § 603. Sale of Property to Pay Tax.

- § 604. Inventory and Appraisement—Failure to File.
- § 605. Recording Inventory and Appraisement—Copies of Papers.
- § 606. Tax on Stock Transferred by Foreign Executor.
- § 607. Tax on Assets Delivered to Nonresident.
- § 608. Refunding Excess Payments.
- § 609. Determination of Value of Property.
- § 610. Determination of Tax by Commission.
- § 611. Jurisdiction of Probate Court.
- § 612. Administration at Instance of Tax Commission.
- § 613. Account of Executor not Settled Until Tax Paid.
- § 614. Proceedings for Recovery of Tax.
- § 615. Retrospective Operation of Statute.
- § 616. Report of County Treasurer.
- § 617. Commissions of County Treasurer.
- § 618. Taxes to be Paid into State Treasury.
- § 619. Definitions of Terms.

## CHAPTER XXXII.

### KENTUCKY STATUTE.

*(Acts of 1906; Russell's Statutes (1909), pp. 1521-1525.)*

- § 620. Transfers Subject to Tax—Rate of Taxation—Persons Liable.
- § 621. Estates for Years or Life—Remainders and Contingent Interests.
- § 622. Bequests to Executors in Lieu of Compensation.
- § 623. Time for Payment—Interest and Discount.
- § 624. Penalty for Nonpayment.
- § 625. Collection of Tax.
- § 626. Sale of Property to Pay Tax.
- § 627. Payment by Executor to Sheriff or Collector—Receipts and Vouchers.
- § 628. Refund to Legatee of Overpayment.
- § 629. Transfer of Stock or Loans—Payment of Tax.
- § 630. Appraisers and Appraisement.
- § 631. Appraiser Taking Other Than Regular Fees—Penalty.
- § 632. Jurisdiction of County Court.
- § 633. Records to be Kept by County Clerk.
- § 634. Duties of Sheriff or Collector in Enforcing and Accounting for Taxes.
- § 634a. Refund Where Legacy Less Than Five Hundred Dollars.

## CHAPTER XXXIII.

## LOUISIANA STATUTE.

(*Laws of 1906, p. 173; 3 Wolff's Constitution and Revised Laws of 1904-08, pp. 769-778.*)

- § 635. Transfers Subject to Tax—Rates.
- § 636. Transfers not Subject to Tax.
- § 637. Taking Possession of Succession Without Authority of Court.
- § 638. Executor to Fix Amount of Tax.
- § 639. Collection of Tax.
- § 640. Liability of Executor—No Discharge Until Tax Paid.
- § 641. Duty of Heir When Administration not Ordered by Court.
- § 642. Payment of Tax.
- § 643. Sale of Property to Pay Tax.
- § 644. Liability of Heir for Legacy Tax.
- § 645. Search by Tax Collector.
- § 646. Appointment of Executor When Will Found.
- § 647. Procedure Where No Will Found.
- § 648. Proceedings by Heir or Legatee—Costs and Attorney Fee.
- § 649. Rights of Creditors Preserved.
- § 650. Tax on Entire Succession to be Paid When Accepted.
- § 651. Transfer or Delivery of Stocks, Deposits and Other Property.
- § 652. Burden of Proof to Establish Exemption.
- § 653. Jurisdiction of District Court.
- § 654. Curator Ad Hoc to Represent Nonresident and Unknown Heirs.
- § 655. Commissions of Tax Collector and Clerk of Court.
- § 656. Attorney to Assist Clerk of Court—Fees.
- § 657. Valuation of Annuities.
- § 658. Interest on Delinquent Tax.
- § 659. Costs to be Borne by Mass of Succession.

## CHAPTER XXXIV.

## MAINE STATUTE.

(*Revised Statutes of 1903, p. 151; Laws of 1905, p. 131; Laws of 1909, p. 185; Laws of 1911, p. 173.*)

- § 660. Transfers Subject to Tax—Rates—Persons Liable.
- § 661. Estates for Years or for Life and Remainders.
- § 662. Bequests to Executor in Lieu of Compensation.
- § 663. Time for Payment of Tax—Interest—Lien.
- § 664. Liability of Executor.
- § 665. Collection of Tax by Executor.
- § 666. Legacies Charged upon Real Estate.
- § 667. Legacies for a Limited Period.

- § 668. Sale of Property to Pay Tax.
- § 669. Account of Executor not Settled Until Tax Paid.
- § 670. Filing Copies of Inventory.
- § 671. Executor to Inform Board of Assessors of the Transfer.
- § 672. Refunding Excess Payments.
- § 673. Appraisement and Valuation of Property.
- § 674. Jurisdiction of Probate Court and Proceedings Therein.
- § 675. Fees of Judges or Registers of Probate.
- § 676. Definitions of Terms.
- § 677. Attorney General to be Furnished Lists of Estates and Investigate Same.
- § 678. Application by Attorney General for Appointment of Administrator.
- § 679. Failure of Executor to File Inventory.
- § 680. Property Subject to Tax in Another State or Country.
- § 681. Report of Deaths to Attorney General.
- § 682. Stock in Corporations Organized in Two or More States.
- § 683. Transfers of Stocks, Bonds, etc., not Subject to Tax.
- § 684. Transfer of Stocks, etc., of Nonresident Decedent.
- § 685. Delivery or Transfer of Assets of Nonresident Without Payment of Tax.
- § 686. Proceedings to Recover Tax.
- § 687. Retrospective Operation of Statute.
- § 688. Payment of Funds to State Treasurer.

## CHAPTER XXXV.

### MARYLAND STATUTE.

*(2 General Laws of 1904, pp. 1835-1842; Laws of 1908, pp. 233, 239.)*

- § 689. Transfers Subject to Tax—Rates—Exemptions.
- § 690. Payment of Tax by Executor.
- § 691. Valuation of Personalty—Sale of Property to Pay Tax.
- § 692. Failure of Executor to Pay Tax Within Thirteen Months.
- § 693. Appointment of Appraisers of Real Estate.
- § 694. Warrant to Appraisers of Real Estate.
- § 695. Appraisement of Property Lying in More Than One County.
- § 696. Inventory of Real Estate.
- § 697. Death or Refusal of Appraiser to Act.
- § 698. Return of Inventory of Real Estate.
- § 699. Appraisement Deemed to be True Value of Real Estate.
- § 700. Lien of Tax.
- § 701. Collection of Tax—Sale of Real Estate.
- § 702. Estates for Life or for Years and Remainders.
- § 703. Determination of Value of Estate Less Than Absolute Interest.
- § 704. Sale of Property to Pay Tax.
- § 705. Liability of Executor on Bond.
- § 706. Revocation of Executor's Letters for Failure to Perform Duties.

- § 707. Powers and Duties of Administrator De Bonis Non.
- § 708. Proceedings Where No Administration Taken Out.
- § 709. Failure of Persons Entitled to Take Out Administration.
- § 710. Application for Letters—Inquiry as to Real Estate.
- § 711. Receipts for Payment of Tax.
- § 712. Payment to Treasurer—Commissions of Clerks and Registers of Wills.
- § 713. Failure of Clerks or Registers to Account.

## CHAPTER XXXVI.

### MASSACHUSETTS STATUTE.

*(Supplement to Revised Laws of 1902-08, pp. 236-248; Acts of 1909, pp. 647-791; Acts of 1910, p. 430; Acts of 1911, pp. 327, 490.)*

- § 714. Transfers Subject to Tax—Rates—Interest—Exemptions.
- § 715. Stock in Corporation Organized Under Laws of More Than One State.
- § 716. Property Subject to Tax Under Laws of Another State.
- § 717. Time for Payment of Tax—Remainders—Liens—Interest.
- § 718. Deposit in Lieu of Payment of Tax.
- § 719. Assessment upon Actual Value of Property.
- § 720. Payment of Tax on Future Interests.
- § 721. Bequests to Executors in Lieu of Compensation.
- § 722. Collection of Tax by Executor—Sale of Land.
- § 723. Legacy Charged upon Real Estate.
- § 724. Testamentary Provision for Payment of Tax.
- § 725. Sale of Real Estate to Pay Tax.
- § 726. Inventory—Penalty for Failure to File.
- § 727. Copies of Inventory and Other Papers.
- § 728. Transfers of Stock by Foreign Executor.
- § 729. Transfer or Delivery of Securities—Notice to Treasurer and Receiver General.
- § 730. Tax Commissioner to be Party to Petition by Foreign Executor.
- § 731. Refunding of Tax Paid.
- § 732. Appraisal and Valuation of Property.
- § 733. Determination of Amount of Tax by Commissioner.
- § 734. Jurisdiction of Probate Court—Liability of Executor.
- § 735. Application by Tax Commissioner for Appointment of Administrator.
- § 736. Account of Executor not Allowed Until Tax Paid.
- § 737. Proceedings by Treasurer and Receiver General to Recover Tax.
- § 738. Retrospective Operation of Statute.
- § 739. Construction of Statute With Reference to Other Laws.
- § 740. Repeal of Other Legislation.
- § 741. Powers of Appointment.
- § 742. Refusal to Furnish Tax Commissioner With Information.
- § 743. Application of Provisions of This Act to Unpaid Taxes.

- § 744. Application of Act to Administrators Appointed Prior to Passage.
- § 745. Proceedings to Determine Taxes on Real Estate.
- § 746. Right to Inspect Papers and Records and Use Them in Legal Proceedings.

## CHAPTER XXXVII.

### MICHIGAN STATUTE.

*(Public Acts of 1899, p. 285; Public Acts of 1903, p. 277; Public Acts of 1907, p. 199; Public Acts of 1909, pp. 71, 700; Public Acts of 1911, p. 101.)*

- § 747. Transfers Subject to Tax—Rates.
- § 748. Transfers Exempt from Taxation.
- § 749. Proceedings to Enforce Tax—Foreclosure of Lien—Redemption.
- § 750. Interest and Discount.
- § 751. Collection of Tax by Executor—Sale or Mortgage of Property.
- § 752. Refund of Tax Erroneously Paid.
- § 753. Payment of Tax in Case of Reversions or Remainders.
- § 754. Bequests to Executor in Lieu of Commissions.
- § 755. Transfer or Delivery of Stock, Deposits or Securities—Notice.
- § 756. Jurisdiction of Probate Court—Petition for Letters.
- § 757. Appointment of Appraisers—Valuation of Property.
- § 758. Notice of Appraisement—Proceedings and Expenses.
- § 759. Report of Appraiser—Assessment of Tax.
- § 760. Notice to Attorney General of Delinquencies—Proceedings to Collect Tax.
- § 761. Receipts—Transfer Tax-book.
- § 762. Fees of County Treasurer.
- § 763. Record to be Kept by Probate Judge.
- § 764. Copies of Letters and Forms—Report of Register of Deeds—Property of Nonresident.
- § 765. Report of County Treasurer—Examiners of Records.
- § 766. Payment to State Treasurer—Application of Funds.
- § 767. Definitions of Terms.
- § 768. Time When Statute Takes Effect.

## CHAPTER XXXVIII.

## MINNESOTA STATUTE.

(*Laws of 1905, c. 288; Revised Laws Supplement 1909, pp. 252-266; Laws of 1911, pp. 274, 516.*)

- § 769. Transfers Subject to Tax.
- § 770. Computation of Tax.
- § 771. Rates of Taxation.
- § 772. Rates of Taxation.
- § 773. Transfers Exempt from Taxation.
- § 774. Time When Statute Takes Effect—Valuation of Property.
- § 775. Collection of Tax by Executor.
- § 776. Payment to County and State Treasurer—Receipts.
- § 777. Lien of Tax.
- § 778. Interest on Tax.
- § 779. Sale of Property to Pay Tax.
- § 780. Legacy Charged upon Real Estate.
- § 781. Refund of Tax Erroneously Paid.
- § 782. Nonresidents—Transfer or Delivery of Stocks and Securities—  
Notice.
- § 783. Transfer or Delivery of Deposits or Securities—Notice.
- § 784. Application by Attorney General for Letters of Administration.
- § 785. Appointment of Appraisers.
- § 786. Appraisement at Full and True Value.
- § 787. Notice of Appraisement—Proceedings and Report—Compensation of  
Appraisers.
- § 788. Determination of Value of Estate and Amount of Tax.
- § 789. Notice of Tax for Which Estate is Liable.
- § 790. Objections to Assessment—Reassessment.
- § 791. Notice to County Attorney of Delinquencies—Proceedings to En-  
force Tax.
- § 792. Records and Reports of Probate Court—Report of Register of Deeds.
- § 793. Stipulation by Attorney General of Amount of Tax to be Paid.
- § 794. Power of Attorney General to Issue Citations and Examine Books  
and Records.
- § 795. Refund of Tax.
- § 796. Duty of State Auditor and Treasurer.
- § 797. Seal of Attorney General.
- § 798. Assistant Attorney General in Inheritance Tax Matters.
- § 799. Time When Act Takes Effect.
- § 800. Repeal of Inconsistent Statutes.
- § 801. Validity of Previous Proceedings.
- § 802. Effect of This Act on Pending Proceedings.



## CHAPTER XXXIX.

## MISSOURI STATUTE.

*(Revised Statutes of 1899, secs. 299-322; Laws of 1901, p. 43; Laws of 1903, p. 52; Ann. Stats. 1906, pp. 446-456.)*

- § 804. Transfers Subject to Tax—Rates—Lien of Tax—Persons Liable.
- § 805. Time for Payment—Interest and Discount—Lien—Bond of Executor.
- § 806. Payment and Report by Collector to State Auditor.
- § 807. Revenue to be Known as "State Seminary Moneys."
- § 808. Revenue to be Known as "Educational Fund."
- § 809. Payment of Tax on Reversions, Remainders and Expectancies.
- § 810. Bequests to Executors in Lien of Commissions.
- § 811. Collection of Tax by Executor.
- § 812. Payment of Tax on Gift for a Limited Period.
- § 813. Payment by Executor to Collector of Revenue—Receipts.
- § 814. Refund of Tax.
- § 815. Executor to Notify Probate Judge of Taxable Transfers.
- § 816. Transfer of Stocks or Loans by Foreign Executor.
- § 817. Appraisers and Appraisement.
- § 818. Determination of Value of Estate and Assessment of Tax.
- § 819. Reappraisement.
- § 820. Appraiser Taking Illegal Fees—Penalty.
- § 821. Jurisdiction of Probate Court—Prosecuting Attorney to Represent State.
- § 822. Records to be Kept by Probate Judge.
- § 823. Reports to be Made by Probate Judge and County Recorder.
- § 824. Notice to Collector of Unpaid Tax—Proceedings for Collection.
- § 825. Receipts for Payment of Tax.
- § 826. Commissions for Collecting Tax.
- § 827. Repeal of Inconsistent Statutes.

## CHAPTER XL.

## MONTANA STATUTE.

*(Revised Codes of 1907, secs. 7724-7751.)*

- § 828. Transfers Subject to Tax—Rate of Taxation—Exemptions.
- § 829. Appraisement of Contingent or Determinable Estates.
- § 830. Bequest to Executor in Lieu of Compensation.
- § 831. Time for Payment of Tax—Interest and Discount.
- § 832. Penalty for Nonpayment.
- § 833. Collection of Tax by Executor.
- § 834. Sale of Property to Pay Tax.
- § 835. Payment to County Treasurer—Receipts.
- § 836. Liability on Executor's Bond.

- § 837. Proceedings upon Failure of Executor to Pay Tax.
- § 838. Administrator De Bonis Non.
- § 839. Refund in Case of Debts Proved After Distribution.
- § 840. Refund in Case of Erroneous Payment.
- § 841. Transfer of Stocks or Loans by Foreign Executor.
- § 842. Appraisers and Appraisement.
- § 843. Appraiser Taking More Than Regular Fees—Penalty.
- § 844. Jurisdiction of Courts.
- § 845. Citation to Compel Payment.
- § 846. Proceedings upon Failure to Administer Estates.
- § 847. Action to Enforce Tax.
- § 848. Statement by Clerk of Delinquent Taxes.
- § 849. Costs of Collection.
- § 850. Record to be Kept by Clerk.
- § 851. Duties of County Treasurer.
- § 852. Receipts for Payment of Tax—Records.
- § 853. Purposes to Which Taxes Shall be Devoted.
- § 854. Repeal of Inconsistent Acts.
- § 855. Time When Statute Takes Effect.

## CHAPTER XLI.

### NEBRASKA STATUTE.

*(Compiled Statutes of 1906, secs. 5176-5196; Compiled Statutes of 1911, pp. 1646-1652.)*

- § 856. Transfers Subject to Tax—Rate of Taxation—Value of Property—Exemptions.
- § 857. Estates for Years or for Life and Remainders.
- § 858. Time for Payment—Interest—Bond.
- § 859. Collection of Tax by Executor.
- § 860. Sale of Property to Pay Tax.
- § 861. Payment by Executor to County Treasurer—Receipts.
- § 862. Information to County Treasurer of Taxable Transfers.
- § 863. Refunding Tax When Debts Proved After Distribution.
- § 864. Transfer of Stocks or Loans by Foreign Executor.
- § 865. Refund of Tax Erroneously Paid.
- § 866. Appraisers and Appraisement.
- § 867. Appraiser Receiving More Than Legal Fees—Penalty.
- § 868. Jurisdiction of County Court.
- § 869. Proceedings to Enforce Tax.
- § 870. Notice to County Attorney of Refusal to Pay Tax.
- § 871. Statement of County Judge and Clerk of Taxable Transfers.
- § 872. Repealed.
- § 873. Book and Records to be Kept by County Judge.
- § 874. Disposition to be Made of Revenue.
- § 875. Receipts for Payment of Tax.
- § 876. Lien of Tax.

## CHAPTER XLII.

## NEW HAMPSHIRE STATUTE.

(*Laws of 1905, pp. 432-436; Laws of 1907, pp. 66-70; Laws of 1911, pp. 44-52.*)

- § 877. Transfers Subject to Tax.
- § 878. Estates for Years or for Life and Remainders.
- § 879. Bequest to Executor in Lieu of Commissions.
- § 880. Time for Payment of Bond—Interest and Lien.
- § 881. Collection of Tax by Executor.
- § 882. Legacy Charged upon Real Estate.
- § 883. Transfer of Less Than Fee.
- § 884. Sale of Land to Pay Tax.
- § 885. Statements and Accounts of Administrator—Inventory and Appraisal.
- § 886. Copies of Papers to be Sent State Treasurer.
- § 887. Notice to State Treasurer of Transfer of Estate of Decedent.
- § 888. Determination of Amount of Tax.
- § 889. Reappraisement—Assessment of Tax.
- § 890. Appeal—Enforcement of Lien.
- § 891. Application by State Treasurer for Administration.
- § 892. Account of Executor not Allowed Until Taxes Paid.
- § 893. Appearance Before State Treasurer in the Matter of Taxes.
- § 894. Transfer of Stock or Obligations by Foreign Executor.
- § 895. Transfer of Securities or Assets Belonging to Estate of Nonresident.
- § 896. State Treasurer a Party to All Proceedings.
- § 897. Books and Blanks to be Furnished Probate Judge.
- § 898. Time When Statute Takes Effect.

## CHAPTER XLIII.

## NEW JERSEY STATUTE.

(*Public Laws of 1894, p. 318; Public Laws of 1898, p. 106; Public Laws of 1902, p. 670; Public Laws of 1903, p. 128; Public Laws of 1906, p. 432; Public Laws of 1908, p. 200; Public Laws of 1909, pp. 49, 236, 304, 325; Compiled Statutes of 1910, pp. 5301-5311.*)

- § 899. Transfers Subject to Tax—Rates—Persons Liable—Exemptions.
- § 900. Estates for Years or for Life and Remainders.
- § 901. Expectancies, Contingent Estates, and Executory Devises.
- § 902. Bequest to Executor in Lieu of Compensation.
- § 903. Time for Payment—Interest and Discount—Bond—Lien.
- § 904. Penalty for Nonpayment of Tax.
- § 905. Collection of Tax by Executor.
- § 906. Sale of Property to Pay Tax.

- § 907. Payment to State Treasurer—Receipts—Records.
- § 908. Notice to Controller of Taxable Transfers.
- § 909. Refund of Tax on Proof of Debts After Distribution.
- § 910. Transfer of Property of Nonresident Decedent.
- § 911. Liability of Property to Tax Due Prior to Passage of This Act.
- § 912. Valuation of Annuities and Estates for Life or for Years.
- § 913. Refund of Tax Erroneously Paid.
- § 914. Notice to Controller of Administration Proceedings.
- § 915. Examination of Papers and Records by Controller.
- § 916. Appraisers and Appraisement.
- § 917. Compensation—Penalty for Taking Illegal Fees.
- § 918. Jurisdiction of Ordinary.
- § 919. Citation to Delinquent Taxpayer.
- § 920. Notice to Attorney General of Delinquencies—Proceedings.
- § 921. Records to be Kept by Controller.
- § 922. Compensation to Person Discovering Taxable Transfer.
- § 923. False Statement to Appraiser—Penalty.
- § 924. Definition of Terms.
- § 925. Constitutionality of Sections.
- § 926. Repeal of Inconsistent Acts—Liens and Remedies.
- § 927. Exemption of Certain Transfers.
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(*3 Birdseye's Rev. Stats., Codes and Gen. Laws 1901, pp. 3591-3604; Tax Law 1909, pp. 123-145; Laws of 1911, pp. 1958, 2124.*)

- § 930. Transfers Subject to Tax.
- § 931. Exceptions and Limitations.
- § 932. Rate of Taxation.
- § 933. Accrual and Payment of Tax.
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- § 935. Collection of Tax by Executors—Lien.
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- § 954. Definitions.
- § 955. Exemptions in Article One not Applicable.
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### NORTH CAROLINA STATUTE.

(*2 Pell's Revisal, 1908, pp. 2448-2454; Laws of 1909, pp. 656-662.*)

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- § 965. Refunding Tax When Debts Proved After Distribution.
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- § 973. Transfers Subject to Tax—Rates—Lien.
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- § 975. Property Subject to Tax.
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- § 979. Inventory to be Filed by Executor—Lien of Tax.

- § 980. Appraisement of Property.
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- § 993. Transfers Subject to Tax—Rates—Persons Liable—Interest—Lien.
- § 994. Exemptions from Tax.
- § 995. Estates for Life or for Years and Remainder.
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- § 997. Payment of Tax—Interest and Discount.
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- § 1012. Rate of Taxation in Certain Cases.
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- § 1021. Transfer of Stock or Obligations by Foreign Executor—Notice.
- § 1022. Jurisdiction of County Court.
- § 1023. Appointment of Appraisers and Valuation of Property.
- § 1024. Proceedings by Appraiser—Compensation.
- § 1025. Report of Appraiser.
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- § 1036. Interpretation of Words Used in Statute.

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- § 1046. Refund of Tax Erroneously Paid.
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- § 1048. Delivery of Deposits or Securities—Notice.
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- § 1056. Court may Act on Appraisement or Require Another.
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- § 1086. Interest and Discount.
- § 1087. Collection of Tax by Executor.
- § 1088. Legacies for Limited Period or upon Contingency.
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- § 1090. Notice to County Register of Transfer.
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- § 1096. Appointment of Expert as Appraiser.
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- § 1098. Records to be Kept by Register of Wills.
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- § 1113. Transfers Subject to Tax—Rates of Taxation—Market Value.
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- § 1126. Citation to Delinquent Taxpayer.

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- § 1143. Information of Transfers to Clerk of County Court.
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- § 1156. Jurisdiction of County Courts—Appeals.
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*(Acts of 1907, pp. 497-505; Supplement to Sayles' Texas Civil Statutes of 1908-10, pp. 387-392.)*

- § 1167. Transfers Subject to Tax—Rates of Taxation.
- § 1168. Estates for Years or for Life and Remainder.
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- § 1183. Transfers Subject to Tax—Rates—Lien of Tax—Exemptions.
- § 1184. Deduction of Debts.
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- § 1218. Transfers Subject to Tax—Rates.
- § 1219. Transfers Intended to Take Effect at Death.
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- § 1224. Sale of Property to Pay Tax.
- § 1225. Property not Delivered Until Tax Paid—Lien of Tax.
- § 1226. Failure of Executor to Collect Tax.
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- § 1235. Report by Probate Court to Commissioner of Taxes.
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- § 1238. Appointment of Appraisers.
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- § 1240. Oath of Appraisers—Notice to Parties.
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- § 1242. Findings and Reports of Appraisers.
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- § 1244. Agreement by Commissioner of Taxes With Executor as to Valuation.
- § 1245. Expiration of Such Agreement in Writing.
- § 1246. Filing of Agreement With Various Officers.
- § 1247. Affirmance or Setting Aside of Agreement.
- § 1248. Effect of Setting Aside Agreement.
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- § 1250. Determination of Value of Annuities, etc.
- § 1251. Valuation of Yearly Income.
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- § 1255. Receipts to be Issued by State Treasurer.
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- § 1257. Time for Payment of Tax.
- § 1258. Payment of Tax on Delivery of Distributive Share.
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- § 1260. Extension of Time Where Value not Determinable.
- § 1261. Records to be Kept of Extension of Time.
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- § 1273. Penalty for Recording Transfer of Stock Without Payment of Tax.
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- § 1279. Notice by Bank to Tax Commissioner.
- § 1280. Bank not to Pay Deposit Without Consent of Tax Commissioner.
- § 1281. Failure of Bank or Trust Company to Obey Law—Penalty.
- § 1282. Petition by Tax Commissioner to Determine Amount of Tax Due.
- § 1283. Service of Petition.
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- § 1285. Appellate Proceedings.
- § 1286. Proceedings Installed by Tax Commissioner in Probate Court.
- § 1287. Jurisdiction of Court in Such Proceedings.
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- § 1289. Jurisdiction of Court After Issuance of Letters.
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- § 1292. Compensation of Witnesses.
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- § 1294. Reports of Listers.
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## CHAPTER LVI.

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(*Acts of 1903, c. 148; 2 Code (1904), p. 2219; Acts of 1910, pp. 229, 230;  
3 Code Supp. (1910), pp. 530, 531.*)

- § 1298. Transfers Subject to Tax—Rates—Exemptions.
- § 1299. Collection of Tax by Personal Representative.
- § 1300. Collection of Tax on Real Estate—Lien and Sale.
- § 1301. Payment to County Treasurer.
- § 1302. Determination of Tax by Court—Duties of Clerk, Auditor and Treasurer.
- § 1303. Penalty for Failure to Pay Tax.

## CHAPTER LVII.

### WASHINGTON STATUTE.

(*2 Remington & Ballinger's Codes and Statutes, pp. 2082-2088; Laws of 1911,  
p. 60.*)

- § 1304. Transfers Subject to Tax—Deductions—Interest—Lien.
- § 1305. Rates of Taxation.
- § 1306. Property Subject to Tax.
- § 1307. Property Belonging to Foreign Estate.
- § 1308. Appraisal of Property and Collection of Tax.
- § 1309. Estates for Life and Remainder in Favor of Lineal Descendant.
- § 1310. Estate for Life in Favor of Collateral Relatives.
- § 1311. Bequest to Executor in Lieu of Commissions.
- § 1312. Legacy Charged upon Real Estate.
- § 1313. Collection of Tax by Executor.
- § 1314. Payment to State Treasurer—Receipts—Interest.
- § 1315. Appraisers and Appraisement.
- § 1316. Transfer of Stock or Obligations by Foreign Executor.

- § 1317. Statement of Character of Property and Names of Heirs.
- § 1318. Extension of Time for Filing Appraisement.
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- § 1322. Transfers Subject to Tax.
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- § 1325. Exemptions from Tax.
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- § 1337. Ascertainment by Tax Commissioner of Taxable Transfers—Certificates.
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- § 1340. Assessment of Tax by Commissioner.
- § 1341. Payment of Tax into Treasury—Certificate of Payment.
- § 1342. Enforcement of Tax.
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- § 1345. Account of Fiduciaries not Allowed Without Certificate of Tax Commissioner.
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- § 1347. Liability of Fiduciaries and Sureties.
- § 1348. Penalty for Failure to Discharge Duties.
- § 1349. Inspection of Books by Tax Commissioner.

## CHAPTER LIX.

## WISCONSIN STATUTE.

(*Laws of 1903, pp. 65-81; Laws of 1905, p. 162; Laws of 1907, pp. 52, 585; Laws of 1909, pp. 635-647; Laws of 1911, pp. 524, 644.*)

- § 1350. Transfers Subject to Tax—Value of Property.
- § 1351. Primary Rates of Taxation.
- § 1352. Other Rates of Taxation.
- § 1353. Exemptions from Tax.
- § 1354. Lien of Tax—Payment to Treasurer—Receipts—Time for Payment.
- § 1355. Interest and Discount.
- § 1356. Collection of Tax by Executor—Sale of Property.
- § 1357. Refund of Tax in Certain Cases.
- § 1358. Bond to Pay Tax When Person Comes into Possession or Enjoyment.
- § 1359. Bequest to Executor in Lieu of Compensation.
- § 1360. Transfer or Delivery of Stocks, Securities and Deposits—Notice.
- § 1361. Jurisdiction of County Court—Estates of Nonresidents—Fees of County.
- § 1362. Appraisers and Appraisal—Contingent and Expectant Estates.
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- § 1364. Report of Special Appraiser—Proceedings Thereon—Computation of Tax—Reappraisal.
- § 1365. Enforcement of Unpaid Taxes.
- § 1366. Duties of Public Administrator.
- § 1367. Repealed.
- § 1368. Report of County Treasurer.
- § 1369. Retention of Funds by Treasurer for Use of County.
- § 1370. Compromise of Taxes in Certain Cases.
- § 1371. Receipts for Payment of Tax.
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- § 1373. Definition of Terms.
- § 1374. Compromise of Taxes Accruing Prior to This Act.

## CHAPTER LX.

## WYOMING STATUTE.

(*Laws of 1903, pp. 95-100; Compiled Statutes (1910), pp. 646-651.*)

- § 1375. Transfers Subject to Tax—Rates—Exemptions.
- § 1376. Estates for Years or for Life and Remainders.
- § 1377. Time for Payment—Bond—Interest.
- § 1378. Collection of Tax by Executor.
- § 1379. Sale of Property to Pay Tax.
- § 1380. Payment to County Treasurer—Receipts and Vouchers.



- § 1381. Statement to County Treasurer of Taxable Transfers.
- § 1382. Refund of Tax When Debts Proved After Distribution.
- § 1383. Transfer of Stocks or Loans by Foreign Executor.
- § 1384. Refund of Tax Paid Erroneously.
- § 1385. Appraisers and Appraisement.
- § 1386. Appraiser Taking More Than Regular Fees—Penalty.
- § 1387. Jurisdiction of District Court.
- § 1388. Proceedings to Enforce Tax.
- § 1389. Notice to County Attorney of Unpaid Taxes.
- § 1390. Statement to County Treasurer of Delinquent Taxpayers.
- § 1391. Record of Estates to be Kept by County Clerk.
- § 1392. Custody and Use of Taxes Collected.
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# INHERITANCE TAXATION.

## CHAPTER I.

### NATURE, BASIS, AND EXTENT OF TAX.

- § 1. Meaning of Inheritance Tax.
- § 2. Various Forms of Tax.
- § 3. Distinction Between Various Taxes.
- § 4. Tax not Regarded as Charge on Property.
- § 5. Tax Considered as Charge on Succession.
- § 6. Other Concepts of Tax.
- § 7. Basis of Right of State Legislature to Impose Tax.
- § 8. Basis of Right of Congress to Impose Tax.
- § 9. Origin and Extent of Inheritance Taxation.
- § 10. Important Features of This Form of Taxation.

§ 1. **Meaning of Inheritance Tax.**—The term “inheritance tax,” as generally employed, applies to all transmissions of property occasioned by the death of the owner. It is not confined to transfers by inheritance or succession proper, that is, to transmissions by operation of law of the estates of persons dying intestate; but it applies as well to transmissions of property by will, gifts causa mortis, or gifts inter vivos in contemplation of or to take effect at death, made perhaps with the intention (although this circumstance is generally immaterial) of evading the tax and obviating the necessity of probate proceedings. Transfers, either by succession, devise, bequest, or gift in contemplation of or to take effect upon death, are alike subject to the inheritance tax as it is ordinarily now imposed.<sup>1</sup>

<sup>1</sup> *Knox v. Emerson*, 123 Tenn. 509, 131 S. W. 972; *Estate of White*, 42 Wash. 360, 84 Pac. 831. The Tennessee court in the above case, referring to inheritance taxation, said: “Coming to us from the civil law, it is proper, therefore, as was done in *Swanson v. Swanson*, 2 Swan, 446, to look to that law in order to ascertain the meaning attached by it to the word ‘inheritance’; and in doing so it is found, as is

**§ 2. Various Forms of Tax.**—The tax also sometimes takes the form of an estate duty, or stamp tax on the probate of wills, letters of administration, bonds of administrators, and inventories. Looking over the whole field, and considering death duties as imposed by the different governments of the earth, said Justice White, the following appears: "Although different modes of assessing such duties prevail, and although they have different accidental names, such as probate duties, stamp duties, taxes on the transaction, or the act of passing an estate or a succession, legacy taxes, estates taxes or privilege taxes, nevertheless tax laws of this nature in all countries rest in their essence upon the principle that death is the generating source from which the particular taxing power takes its being, and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested."<sup>2</sup>

**§ 3. Distinction Between Various Taxes.**—A distinction has been made, however, between an inheritance or succession tax and a probate or estate tax. There are, it has been said, two classes of death duties. One reaches the interest which ceased with

stated in that opinion, to be the succession to all the rights of the deceased. It is of two kinds—that which arises by testament, when the testator gives his succession to a particular person; and that which arises by operation of law, which is called succession *ab intestato*: Bouvier's Law Dictionary, p. 1037. Such has been the meaning attached to the word 'inheritance' when used in our legislation with regard to succession taxes. In defining the sources from which public revenues were derived, in Code of 1858, section 538 (Shannon's Code, sec. 685), among them is included 'collateral inheritance taxes.' It is inconceivable that the framers of the code, by this use of the term 'inheritance,' intended to confine this tax to those taking as heirs the real estate of the ancestor, or to devolutions of property by operation of law, and exclude successions by will to either personal or real estate."

<sup>2</sup> Knowlton v. Moore, 178 U. S. 41, 44 L. Ed. 969, 20 Sup. Ct. Rep. 747; Dixon v. Ricketts, 26 Utah, 215, 72 Pac. 947.

the death of the former owner, and is a tax on the transmission of the property; into this class fall probate and estate duties, the burden of which is borne by the estate. The other reaches the interest to which heirs, devisees, and legatees succeed on the death of the owner. This is a burden upon the right to receive, and is to be paid by the persons beneficially interested, that is, the heirs, devisees, or legatees.\* This distinction may assume importance, and this terminology prove a convenience, in considering some of the problems which inheritance taxation presents, but usually they are of little moment. To quote from the Connecticut court:

“However computed, the tax is an exaction from the estate of the decedent, whose stress incidentally falls on the legatees or distributees with more or less equal or unequal burden, according to the policy adopted by the state in fixing the scope of the exaction, the mode of ascertaining its amount, and of enforcing its collection. Nor is it material to the essence of the tax at what time it is ascertained and collected during the passage of the property, through the channel of the law, from the dead to the living—whether the property is tapped as it falls from the lifeless hand, or midway in its course, or as it passes into the grip of the new owner; whether it is called a probate, a succession, or a legacy tax. Such nomenclature is convenient. Its distinctions may be important for clear discussion of the policy of death duties and the mode of using this form of taxation, and an accurate conception of them may serve to throw light upon the actual intent of the legislature when language of doubtful meaning is used in determining the amount and manner of enforcing the tax. But they are of no practical importance in this case, and we do not con-

\* Estate of Macky, 46 Colo. 79, 23 L. R. A., N. S., 1207, 102 Pac. 1075.

sider the questionable claim that the act before us imposes a legacy tax, as distinguished from a tax on the estate. It may be conceded, for the purposes of argument, that the duty imposed is more accurately termed a legacy tax."<sup>22</sup>

**§ 4. Tax not Regarded as Charge on Property.**—On the general proposition that an inheritance tax is not on the property, but on the transmission or succession, the authorities are agreed. The charge is not on the property itself, although the value of the property determines the amount of the tax, but rather upon the right or privilege to transmit or receive the property. It is the transmission or reception, not the thing transmitted or received, that is taxed.<sup>24</sup> Important constitutional, as well as other, considerations flow from this characteristic of inheritance taxation, for if the tax is not on property, or if it is an indirect as distinguished from a direct tax, then it is not within the purview of certain limitations placed by the organic law upon the power of taxation.

<sup>22</sup> Appeal of Nettleton, 76 Conn. 235, 56 Atl. 565.

<sup>24</sup> In re House Bill No. 122, 23 Colo. 492, 48 Pac. 535; National Safe Deposit Co. v. Stead, 250 Ill. 584, 95 N. E. 973; Union Trust Co. v. Durfee, 125 Mich. 487, 84 N. W. 1101; Estate of Fox, 154 Mich. 5, 117 N. W. 558; Estate of Tuohy, 35 Mont. 431, 90 Pac. 170; Gels-thorpe v. Furnell, 20 Mont. 299, 39 L. B. A. 170, 51 Pac. 267; State v. Vinsonhaler, 74 Neb. 675, 105 N. W. 472; Neilson v. Russell, 76 N. J. L. 27, 69 Atl. 476; Eastwood v. Russell (N. J.), 81 Atl. 108; Estate of Davis, 149 N. Y. 539, 44 N. E. 185; State v. Ferris, 9 Ohio C. C. 298, 2 Ohio Dec. 299, affirmed 53 Ohio St. 314, 30 L. B. A. 218, 41 N. E. 579; State v. Guilbert, 70 Ohio St. 229, 71 N. E. 636; Nunne-macher v. State, 129 Wis. 190, 9 Ann. Cas. 711, 9 L. B. A., N. S., 121, 108 N. W. 627; Plummer v. Coler, 178 U. S. 115, 44 L. Ed. 998, 20 Sup. Ct. Rep. 829; United States v. Perkins, 163 U. S. 625, 41 L. Ed. 287, 16 Sup. Ct. Rep. 1073.

The tax is not upon the property itself, although its value is made the basis of taxation, but on the right of transmission, where, under the deed, grant or gift, the property is not to vest in possession or enjoyment until the death of the grantor, donor or settlor, or if not expressed, such intention is found: *State Street Trust Co. v. Stevens* (Mass.), 95 N. E. 851.

**§ 5. Tax Considered as Charge on Succession.**—Many authorities are coming to define the inheritance tax more specifically by saying that it is a tax on the right of succession, or the right of the heir, devisee or legatee to receive.\* This theory has been clearly elucidated by the Colorado court in holding that the inheritance statute of that state imposes a tax on the right of the beneficiaries to take, not on the

\* *Estate of Hite*, 159 Cal. 392, 113 Pac. 1072; *Kochersperger v. Drake*, 167 Ill. 122, 41 L. R. A. 446, 47 N. E. 321; *Wisting v. Morrow*, 151 Iowa, 590, 132 N. W. 193; *Lacy v. State Treasurer (Iowa)*, 121 N. W. 179; *Estate of Irish*, 28 Misc. Rep. 647, 60 N. Y. Supp. 30; *Estate of Linkletter*, 134 App. Div. 309, 118 N. Y. Supp. 878.

"No decision has been pointed out to us wherein is discussed the specific nature of an inheritance or succession tax, as distinguished from that of a probate, estate or transfer tax, but that it is held that an inheritance or succession tax is on the right to receive the property": *Estate of Macky*, 46 Colo. 79, 23 L. R. A., N. S., 1207, 102 Pac. 1075.

"Inheritance taxes are not laid upon property, but upon the privilege or right of succession to it": *State v. Handlin (Ark.)*, 139 S. W. 1112.

"The tax under this statute is, once for all, an excise or duty upon the right or privilege of taking property by will or descent under the law of the state": *State v. Hamlin*, 86 Me. 495, 41 Am. St. Rep. 569, 25 L. R. A. 632, 30 Atl. 76.

"It must be borne in mind that the tax is not upon the property, but the right or privilege of acquiring it by succession. It is a condition upon which the person may take the estate of a deceased relative or testator by his will. . . . It is not a tax upon the right of alienation, but on the privilege of receiving by inheritance or will or otherwise at the death of a former owner": *State v. Alston*, 94 Tenn. 674, 28 L. R. A. 178, 30 S. W. 750.

"Properly understood, it is not the right to transmit, but the right and privilege to receive, that is taxed. The right to dispose of property during the lifetime of the owner cannot be separated from the property itself, and therefore to tax the right of disposal by contract in the lifetime of the owner, even though to take effect at his death, is to tax the property itself. But the right to dispose of the property by will or descent, taking effect after the death of the owner, is not so closely connected with the right of property, and it is not so clear that such right may not be taxed. But, when the right to receive the property is considered, it is clear that the right is distinct and separate from the property itself, and the state may tax this right to receive property; and this is so whether the property is disposed of by the owner during his lifetime, or at his death. This right to receive property is under the control of the legislature, and it has the power to



property, nor yet on the right of the decedent to give. Hence it is found that legacies to a municipality for a hospital, and to the regents of the state university for an auditorium, being gifts to agencies of the state engaged in the discharge of governmental functions, are not subject to the inheritance tax, by reason of the rule that the property of a state or municipality, held for a public use, is impliedly exempt from taxation.\*

And the California court, construing the inheritance act as imposing a tax solely upon persons for the privilege of succeeding to property as heirs, devisees, or legatees, has affirmed that so much of the estate of the decedent as is lawfully diverted from them for the family allowance and homestead, and for the payment of debts and administration expenses, is not to be included in fixing the tax to be paid. The tax is on the succession, the net succession, and is measured by what the beneficiaries actually receive, not the full amount of the estate of which the decedent died possessed.† Other courts have taken the same view, namely, that the tax is imposed for the privilege of succeeding to the property of a decedent, and therefore can justly attach only as to so much property as actually passes to the heirs, devisees and legatees, after the satisfaction of such charges and burdens as may lawfully be satisfied in due course of administration.‡

regulate and lay such burdens thereon as it may see fit, within the provisions of the constitution": *State v. Ferris*, 53 Ohio St. 314, 30 L. R. A. 218, 41 N. E. 579.

"The most exact rule is that which regards the tax as upon the right to receive property, rather than on the right to dispose of it": *Gelsthorpe v. Furnell*, 20 Mont. 299, 39 L. R. A. 170, 51 Pac. 267.

\* *Estate of Macky*, 46 Colo. 79, 23 L. R. A., N. S., 1207, 102 Pac. 1075.

† *Estate of Kennedy*, 157 Cal. 517, 108 Pac. 280.

‡ *Appeal of Gallup*, 76 Conn. 617, 57 Atl. 699; *Morrow v. Durant*, 140 Iowa, 437, 118 N. W. 781; *Estate of Gihon*, 169 N. Y. 443, 63 N. E. 561; *Estate of Pepper*, 159 Pa. 508, 23 Atl. 353.

**§ 6. Other Concepts of Tax.**—The Massachusetts court defines the inheritance tax as “an excise tax, imposed not only upon the right of the owner of property to transmit it after his death, but also upon the privilege of his beneficiaries to succeed to the property thus dealt with.” This definition is comprehensive, covering, as it does, both the right to transmit and the right to succeed.<sup>9</sup>

Sometimes the inheritance tax is denominated an excise or duty upon the right or privilege of taking property by will or descent, in contradistinction to a direct tax on property.<sup>10</sup> It “is not a tax upon property or property rights in any sense, but purely an excise tax levied upon the transfer or transmission, and merely measured in amount by the amount of the property transferred.”<sup>11</sup>

The Pennsylvania court has spoken of the inheritance tax as “a diminution of the amount that otherwise would pass under the will or other conveyance.” This characterization of the tax was made in a case where it was contended that a bequest to charities was exempt. But, to quote from the opinion of the court, “there is no kind of exception, qualification, condition, or reservation as to what it is that is the subject of the tax. It is the whole of the estate that passes. There is no exemption from the tax in favor of char-

<sup>9</sup> Attorney General v. Stone (Mass.), 95 N. E. 395.

<sup>10</sup> Minot v. Winthrop, 162 Mass. 113, 26 L. R. A. 259, 38 N. E. 512; State v. Hamlin, 86 Me. 495, 41 Am. St. Rep. 569, 25 L. R. A. 632, 30 Atl. 76; Estate of Keeney, 194 N. Y. 281, 87 N. E. 423; Estate of Stixrud, 58 Wash. 339, Ann. Cas. 1912A, 850, 33 L. R. A., N. S., 632, 109 Pac. 343; Knowlton v. Moore, 178 U. S. 41, 44 L. Ed. 969, 20 Sup. Ct. Rep. 747.

“The tax is not one of the expenses of administration, or a charge upon the general estate of the decedent, but is in the nature of an impost tax or tax upon the right of succession”: Estate of Cheney, 1 Cal. App. 30, 81 Pac. 679.

<sup>11</sup> Beals v. State, 139 Wis. 544, 121 N. W. 347; Estate of Bullen, 143 Wis. 512, 139 Am. St. Rep. 1114, 128 N. W. 109.

ities. That which the legatee gets and keeps is the aggregate sum bequeathed, less the amount of the tax. The tax must be retained by the person who has the decedent's property in charge. It is therefore not a tax upon the property or money bequeathed, but a diminution of the amount that otherwise would pass under the will or other conveyance, and hence that which the legatee really receives is not taxed at all. It is that which is left after the tax has been taken off. It is only imposed once, and that is before the legacy has reached the legatee, and before it has become his property. If the tax were a continuing charge imposed year by year after the ownership of the legacy has become vested in the legatee, there would then be room for the claim that it is free because of its charitable character. Being held for charitable purposes, it would come within the description of property exempted from taxation for that reason. But it is quite clear that it cannot have the benefit of that privilege while it is in a state of transition, and before it has become ultimately vested in the possession of the owner."<sup>12</sup>

And the Kentucky court, in holding that it is not against the policy of the law to enforce the inheritance tax upon a fund devised to a public school, has this to say relative to the nature of the tax: "The act authorizing the imposition of this tax makes no exemption in favor of either legatees who may be indebted to the estate, or charitable or religious institutions. The tax is not levied upon the fund, but upon its transmission, and hence the argument that it is against the policy of the law to levy a tax upon a fund devised to a public school has no bearing upon the case at bar, for the reason that this fund does not become a fund devoted to the maintenance of a school

<sup>12</sup> *Estate of Finnen*, 196 Pa. 72, 46 Atl. 269.

until the law relative to its transmission has been complied with. The tax must be paid before the fund in question can become the property of the school or be devoted to educational purposes."<sup>12</sup>

"A precise definition of the nature of this tax," observes the New York court of appeals, "is not essential, if it is susceptible of exact definition. Thus far, in this court, we have not thought it necessary, in the cases coming before us, to determine whether the object of taxation is the property which passes, or not; though, in some, expressions may be found which seem to regard the tax in that light. The idea of this succession tax, as we may conveniently term it, is more or less compound; the principal idea being the subjection of property, ownership of which has ceased by reason of the death of its owner, to a diminution, by the state reserving to itself a portion of its amount, if in money, or of its appraised value, if in other forms of property."<sup>12a</sup>

**§ 7. Basis of Right of State Legislature to Impose Tax.**—The authority of the legislatures of the several states of the Union to impose an inheritance tax has usually been based on the power to regulate the transmission of and succession to the property of deceased persons. The devolution of such property, or the succession thereto, is by permission of the state. Hence the state is competent, acting within reasonable bounds, to prescribe such regulations and attach such conditions in granting the privilege or permission as it sees fit, whether the transmission is effected by testamentary act of the owner or by operation of law in case he dies intestate. And as an incident to such

<sup>12</sup> *Leavell v. Arnold*, 131 Ky. 426, 115 S. W. 232.

<sup>12a</sup> *Estate of Swift*, 137 N. Y. 77, 18 L. R. A. 709, 32 N. E. 1096, quoted in *Estate of Sanford*, 126 Cal. 112, 45 L. R. A. 788, 54 Pac. 259, 58 Pac. 462.

regulation, and as one of such conditions, the legislature may impose an inheritance tax.<sup>14</sup>

"The principles upon which the tax is upheld," said the supreme court of California, "have been so fully

<sup>14</sup> *People v. Griffith*, 245 Ill. 532, 92 N. E. 313; *Booth v. Commonwealth*, 130 Ky. 88, 113 S. W. 61; *Allen v. McElroy*, 130 Ky. 111, 113 S. W. 66; *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101; *Gelsthorpe v. Furnell*, 20 Mont. 299, 39 L. R. A. 170, 51 Pac. 267; *Plummer v. Coler*, 178 U. S. 115, 44 L. Ed. 998, 20 Sup. Ct. Rep. 829.

"Upon general principles, the right to tax the succession or inheritance of property is founded on a reasonable basis, since the right of any person to succeed to property of a deceased person, whether by will or inheritance, is a creature of statute law. . . . As the right to succeed depends upon the law of the state, it follows that the state may regulate that right as public necessity or policy may dictate, and may subject it to such burdens and reasonable conditions as may best subserve the purposes of the state. It must be borne in mind that the tax is not upon the property, but the right or privilege of acquiring it by succession": *State v. Alston*, 94 Tenn. 674, 28 L. R. A. 178, 30 S. W. 750.

The legal basis for inheritance taxes is stated in *United States v. Perkins*, 163 U. S. 625, 41 L. Ed. 287, 16 Sup. Ct. Rep. 1073, as follows: "Though the general consent of the most enlightened nations has from the earliest historical period recognized a natural right in children to inherit the property of their parents, we know of no legal principle to prevent the legislature from taking away or limiting the right of testamentary disposition or imposing such conditions upon its exercise as it may deem conducive to public good. In this view, the so-called inheritance tax of the state of New York is in reality a limitation upon the power of a testator to bequeath his property to whom he pleases—a declaration that, in the exercise of that power, he shall contribute a certain percentage to the public use. In other words, that the right to dispose of his property by will shall remain, but subject to a condition that the state has a right to impose. Certainly, if it be true that the right of testamentary disposition is purely statutory, the state has a right to require a contribution to the public treasury before the bequest shall take effect. Thus the tax is not upon the property, in the ordinary sense of the term, but upon the right to dispose of it, and it is not until it has yielded its contribution to the state that it becomes the property of the legatee. This was the view taken of a similar tax by the court of appeals of Maryland in *State v. Dalrymple*, 70 Md. 294, 299, 3 L. R. A. 372, 17 Atl. 82, in which the court observed: 'Possessing, then, the plenary power indicated, it necessarily follows that the state in allowing property . . . to be disposed of by will, and in designating who shall take such property when

and clearly elaborated that it is necessary to do no more than to refer to the cases. The right of inheritance, including the designation of heirs and the proportions which the several heirs shall receive, as well as the right of testamentary disposition, are entirely matters of statutory enactment, and within the control of the legislature. As it is only by virtue of the statute that the heir is entitled to receive any of his ancestor's estate, or that the ancestor can divert his estate from the heir, the same authority which confers this privilege may attach to it the condition that a portion of the estate so received shall be contributed to the state, and the portion thus to be contributed is peculiarly within the legislative discretion."<sup>15</sup>

The majority of the courts go so far as to declare that the right to transmit or receive property by will or descent is a mere creature of statute, a privilege existing purely by grace of the legislature, and as the legislature may withhold the privilege or confer it at pleasure, it may impose any condition upon the enjoy-

there is no will, may prescribe such conditions, not in conflict with or forbidden by the organic law, as the legislature may deem expedient. These conditions, subject to the limitation named, are consequently wholly within the discretion of the general assembly. The act we are now considering plainly intended to require that a person taking the benefit of a civil right secured to him under our laws should pay a certain premium for its enjoyment. In other words, one of the conditions upon which strangers and collateral kindred may acquire a decedent's property, which is subject to the dominion of our laws, is that there shall be paid out of such property a tax of two and one-half per cent into the treasury of the state. This, therefore, is not a tax upon the property itself, but is merely the price exacted by the state for the privilege accorded in permitting property so situated to be transferred by will or by descent or distribution."

This extract from *United States v. Perkins*, 163 U. S. 625, 41 L. Ed. 287, 16 Sup. Ct. Rep. 1073, is quoted with approval in *Estate of Stixrud*, 58 Wash. 339, Ann. Cas. 1912A, 850, 33 L. R. A., N. S., 632, 109 Pac. 343.

<sup>15</sup> *Estate of Wilmerding*, 117 Cal. 281, 49 Pac. 181; *Estate of Stanford*, 126 Cal. 112, 45 L. R. A. 788, 58 Pac. 462.

ment thereof which it sees fit, such as a tax. Carried to its ultimate conclusion this reasoning would permit the legislature to confiscate the estates of decedents, by the imposition of an excessive tax, and some of the courts have thus unequivocally declared.<sup>16</sup> But the soundness of such a theory may well be deemed doubtful.<sup>16a</sup>

There is no doubt that the right of testamentary gift is subject to such reasonable regulations and restrictions in respect to the form and substance of the testamentary instrument, the manner of its execution and revocation, the competency of the maker to give and the eligibility of the beneficiaries to receive, as the legislature deems expedient to adopt; but to suppose that a right so long and universally recognized as it has been rests entirely upon legislative enactment, and can be absolutely denied at the pleasure of the legis-

<sup>16</sup> Pullen v. Wake County, 66 N. C. 361; Eyre v. Jacob, 14 Gratt. 422, 73 Am. Dec. 367.

<sup>16a</sup> "The descent or devolution of property," says Justice Field, "on the death of the owner in England and in this country has always been regulated by law. We have no occasion in these cases to consider whether the legislature has the power to make the commonwealth the universal legatee or successor of all the property of all its inhabitants when they die, for the purposes, not only of paying the public charges, but also of distributing the property according to its will among the living inhabitants, or for the purpose of abolishing private property altogether. We assume that under the constitution this cannot be done, either directly or indirectly; that the legislature cannot so far restrict the right to transmit property by will or by descent as to amount to an appropriation of property generally; that it cannot impose a tax which shall be equivalent or almost equivalent to the value of the property, and cannot so limit the persons who can take as heirs, devisees, distributees, or legatees that the great mass of all the property of the inhabitants must become vested in the commonwealth by escheat. The state can take property by taxation only for the public service, and we assume that its right to take property, if any exists, by regulating the distribution of it on the death of the owner, is limited in the same manner, and that this right must be exercised in a reasonable way"; Minot v. Winthrop, 162 Mass. 113, 26 L. R. A. 259, 38 N. E. 512.

lature, is to misinterpret the law and ignore one of the most cherished of property rights.<sup>17</sup>

While the legislature is undoubtedly competent to change the rule of inheritance, or provide that heirs shall take subject to such burdens as the payment of debts, or make the deprivation of the right to inherit a portion of the penalty imposed for the commission of a crime, or attach to the privilege the condition that a part of the property shall be contributed to the state in the form of an inheritance tax,<sup>18</sup> it certainly is not so free from doubt as the unanimity of the decisions would seem to indicate that the state may appropriate all of the estate of deceased persons by abolishing laws of inheritance and devise. Said Justice Winslow in the case of *Nunnemacher v. State*:<sup>19</sup> "But, while we utterly reject the doctrine of *Eyre v. Jacob*,<sup>20</sup> and hold that the right to demand that property pass by inheritance or will is an inherent right subject only to reasonable regulation by the legislature, we are not thereby brought to the conclusion that inheritance or succession taxes cannot be levied. They do not depend upon the right to confiscate. We agree entirely with the ideas expressed by the supreme court of Massachusetts in *Minot v. Winthrop*,<sup>21</sup> where it is said: 'We assume that, under the constitution, this (i. e., the taking of all property by the state on the death of the owner) cannot be done either directly or indirectly; that the legislature cannot so far restrict the right to transmit property by will or by descent as to amount to an appropriation of property generally; that it can-

<sup>17</sup> 1 *Ross on Probate Law and Practice*, 14; *Nunnemacher v. State*, 129 Wis. 190, 9 Ann. Cas. 711, 9 L. R. A., N. S., 121, 108 N. W. 627.

<sup>18</sup> 1 *Ross on Probate Law and Practice*, 122; *Estate of Wilmerding*, 117 Cal 281, 49 Pac. 181; *Estate of Tuohy*, 35 Mont. 431, 90 Pac. 170.

<sup>19</sup> *Nunnemacher v. State*, 129 Wis. 190, 9 Ann. Cas. 711, 9 L. R. A., N. S., 121, 108 N. W. 627.

<sup>20</sup> *Eyre v. Jacob*, 14 Gratt. 422, 73 Am. Dec. 367.

<sup>21</sup> *Minot v. Winthrop*, 162 Mass. 113, 26 L. R. A. 259, 38 N. E. 512.



not impose a tax which shall be equivalent, or almost equivalent, to the value of the property, and cannot so limit the persons who can take as heirs, devisees, distributees, or legatees that the great mass of all the property of the inhabitants must become vested in the commonwealth by escheat. The state can take property by taxation only for the public service, and we assume that its right to take property, if any exists, by regulating the distribution of it on the death of the owner is limited in the same manner, and that this right must be exercised in a reasonable way.' . . . . No one doubts for a moment that a government may levy a tax upon transfers of land or upon business transactions; it is done by the federal government in this country whenever additional and extraordinary revenues are needed, in the form of stamp duties. These taxes are not based upon the power to interdict or prohibit such transactions, but upon the power to reasonably regulate and tax them. Succession or inheritance taxes may well be sustained upon the same principle; not upon the power to prohibit, but upon the power to reasonably regulate and tax."

And Justice Marshall, referring to the doctrine that the right to transmit or receive property by will or descent may be abolished at the pleasure of the legislature, observed: "True, it has been affirmed over and over again by judges and courts of the highest respectability. Eminent jurists whose names are written high in the temple of judicial fame have stood sponsors for it. But the greatest errors of the past have had the most distinguished supporters. If it were true that error could be sanctified by mere weight of the number or ability of its advocates, and be given the character of infallible truth by the mere force of repetition, then the error that the constitutional guaranties do not reach the subject we are considering would have long ago taken such deep root that the most courageous

could not have hoped to dislodge it. But such, as experience shows, is not the case. Error, though often repeated, is error still, and, because it is error, it is mortal, and must be swallowed up by immortality.”<sup>22</sup>

**§ 8. Basis of Right of Congress to Impose Tax.—**

If an inheritance tax is regarded as a charge on the transmission and not on the property itself, and the authority to impose it is based on the power to regulate the transmission of property of deceased persons, the question arises whether Congress, which has no authority over the devolution of property in the several states, is competent to impose an inheritance tax. This question, when argued before the supreme court of the United States, in *Knowlton v. Moore*,<sup>23</sup> was answered in this language: “Can the Congress of the United States levy a tax of that character? The proposition that it cannot rests upon the assumption that, since the transmission of property by death is exclusively subject to the regulating authority of the several states, therefore the levy by Congress of a tax on inheritances or legacies, in any form, is beyond the power of Congress, and is an interference by the national government with a matter which falls alone within the reach of state legislation. . . . The fallacy which underlies the proposition contended for is the assumption that the tax on the transmission or receipt of property occasioned by death is imposed on the exclusive power of the state to regulate the devolution of property upon death. The thing forming the universal subject of taxation upon which inheritance and legacy taxes rest is the transmission or receipt, and not the right existing to regulate. In legal effect,

<sup>22</sup> *Nunnemacher v. State*, 129 Wis. 190, 9 Ann. Cas. 711, 9 L. R. A., N. S., 121, 108 N. W. 627.

<sup>23</sup> *Knowlton v. Moore*, 178 U. S. 41, 44 L. Ed. 969, 20 Sup. Ct. Rep. 747.

then, the proposition upon which the argument rests is that wherever a right is subject to exclusive regulation, by either the government of the United States, on the one hand, or the several states on the other, the exercise of such rights as regulated can alone be taxed by the government having the mission to regulate. But when it is accurately stated, the proposition denies the authority of the states to tax objects which are confessedly within the reach of their taxing power, and also excludes the national government from almost every subject of direct and many acknowledged objects of indirect taxation. . . . It cannot be doubted that the argument, when reduced to its essence, demonstrates its own unsoundness, since it leads to the necessary conclusion that both the national and state governments are divested of those powers of taxation which from the foundation of the government admittedly have belonged to them. Certainly, a tax placed upon an inheritance or legacy diminishes, to the extent of the tax, the value of the right to inherit or receive, but this is a burden cast upon the recipient and not upon the power of the state to regulate. . . . Under our constitution system both the national and the state governments, moving in their respective orbits, have a common authority to tax many and diverse objects, but this does not cause the exercise of its lawful attributes by one to be a curtailment of the powers of government of the other, for if it did there would practically be an end of the dual system of government which the constitution established."

This case of *Knowlton v. Moore* may be regarded as definitely establishing the doctrine in the federal courts that the power to impose inheritance taxes does not arise solely from the power to regulate the devolution of the property, but rather "from the general authority to impose taxes upon all property within the jurisdiction of the taxing power. It has usually happened

that the power has been exercised by the same government which regulates the succession to the property taxed; but this power is not destroyed by the dual character of our government, or by the fact that, under our constitution, the devolution of property is determined by the laws of the several states."<sup>24</sup> But Justice Holmes, in his dissenting opinion to *Chanler v. Kelsey*,<sup>25</sup> says: "I always have believed that a state inheritance tax was an exercise of the power of regulating the devolution of property by inheritance or will upon the death of the owner—a power which belongs to the states; and I have been fortified in my belief by the utterances of this court from the time of Chief Justice Taney to the present day. For that reason the power is more unlimited than the power of a state to tax transfers generally, or the power of the United States to levy an inheritance tax. The distinction between state and United States inheritance taxes was recognized in *Knowlton v. Moore*; <sup>26</sup> and whatever may be thought of the decision in *Snyder v. Bettman*,<sup>27</sup> I do not understand it to import a denial of the distinction reaffirmed by the dissenting members of the court."

**§ 9. Origin and Extent of Inheritance Taxation.**—Inheritance taxes are of ancient origin. Two thousand years ago they were imposed in Rome, the idea perhaps having been introduced from Egypt; and in the Middle Ages traces of such taxes were observable as an incident of feudal tenures. To-day England, France, Ger-

<sup>24</sup> *Snyder v. Bettman*, 190 U. S. 249, 47 L. Ed. 1035, 23 Sup. Ct. Rep. 803.

<sup>25</sup> *Chanler v. Kelsey*, 205 U. S. 466, 51 L. Ed. 882, 27 Sup. Ct. Rep. 550.

<sup>26</sup> *Knowlton v. Moore*, 178 U. S. 41, 44 L. Ed. 969, 20 Sup. Ct. Rep. 747.

<sup>27</sup> *Snyder v. Bettman*, 190 U. S. 249, 47 L. Ed. 1035, 23 Sup. Ct. Rep. 803.

many—in fact, practically all the nations of Europe—have adopted some system of inheritance taxation; so, indeed, have many of the colonies of Great Britain, the Spanish-American countries, Japan, and other nations of the world. In the United States, before the end of the eighteenth century, the federal government began the taxation of inheritances. The first tax of this nature was imposed by the stamp act of July 6, 1797, which was repealed five years later. The next tax was imposed by the war revenue act of July 1, 1862, amended two years later, and repealed July 14, 1870. The income tax provisions of the revenue act of August 27, 1894, embraced inheritances, but the scheme being indivisible, the inheritance tax fell when the income tax was declared unconstitutional. The next and last inheritance tax imposed by Congress was by the war revenue act of June 13, 1898, which, so far as the imposition of taxes on inheritances is concerned, was repealed April 12, 1902.<sup>28</sup>

Pennsylvania, Virginia, Louisiana, Maryland, and North Carolina adopted inheritance taxes at quite an early date. Other states, from time to time, have also resorted to the taxation of inheritances, and this system of raising revenue has increased in favor, especially in the past few years, until the following states have an inheritance tax: Arkansas, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas,

<sup>28</sup> *Matter of McPherson*, 104 N. Y. 306, 58 Am. Rep. 502, 10 N. E. 685; *Estate of Morris*, 138 N. C. 259, 50 S. E. 682; *State v. Alston*, 94 Tenn. 674, 28 L. B. A. 178, 30 S. W. 750; *Pollock v. Farmers' Loan etc. Co.*, 158 U. S. 601, 39 L. Ed. 1108, 15 Sup. Ct. Rep. 912; *Knowlton v. Moore*, 178 U. S. 41, 44 L. Ed. 969, 20 Sup. Ct. Rep. 747.

Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Hawaii and Porto Rico have also adopted a system of inheritance taxation.<sup>29</sup>

**§ 10. Important Features of Inheritance Taxation.** Some of the leading features of inheritance tax laws, at least of those recently adopted, are the exemption of estates of limited value; the exemption of gifts to charities; the exemption of gifts to lineal descendants, or the imposition on them of lower rates than on collateral relatives or strangers; and the graduation of the tax according to the value of estates or to the degree of relationship between donor and donee. Some statutes apply only to collateral relatives and strangers, exempting lineal descendants and the surviving husband or wife, but the modern tendency has been to tax all transmissions, whether to lineals or collaterals. This is illustrated by the California statute, which, when first enacted in 1893, imposed a collateral tax only, but which, as amended in 1905, applies to lineal descendants as well as to collateral relatives. An even more significant tendency appears in the adoption of progressive rates, whereby the rate of taxation is made to increase with the value of the estate, or with the remoteness of the relationship between the parties, or with both. Here is suggested an efficient means of limiting the size of inheritable estates and thereby reducing swollen fortunes without resorting to confiscatory measures or offending constitutional principles.

<sup>29</sup> *Dixon v. Bicketts*, 26 Utah, 215, 72 Pac. 947; *Knowlton v. Moore*, 178 U. S. 41, 44 L. Ed. 969, 20 Sup. Ct. Rep. 747.

## CHAPTER II.

## CONSTITUTIONALITY OF STATUTES.

- § 14. Constitutionality in General.
- § 15. Express Constitutional Provisions.
- § 16. Constitutionality of Federal Tax.
- § 17. Constitutionality of Municipal Ordinances.
- § 18. Unconstitutionality of Certain Statutes.
- § 19. Rule of Uniformity and Equality.
- § 20. Guaranty of Equal Protection.
- § 21. Discrimination Between Relatives.
- § 22. Discrimination Against Nonresidents.
- § 23. Discrimination Against Aliens.
- § 24. Exemption of Estates of Limited Value.
- § 25. Exemption of Charities.
- § 26. Progressive Rate of Taxation.
- § 27. Double Taxation in Case of Nonresidence.
- § 28. Detention of Property in Safe Deposit.

§ 14. **Constitutionality in General.**—The constitutionality of the general principles of inheritance taxation has been affirmed by a multitude of decisions, so that the competency of Congress, or the legislatures of the several states, to impose an inheritance tax is universally conceded. The inherent justice and wholesomeness of this system of taxation have so appealed to the judicial mind that all the assaults that wealth, in its aversion to bear its just burdens, has conceived, have proved unavailing. The general doctrine that a state or the United States may raise revenue, and in bountiful quantities, by levying tribute upon estates in the course of transmission from decedents to their successors, is no longer doubted, and most of the attacks now made upon inheritance taxation are upon other than constitutional grounds.<sup>1</sup>

<sup>1</sup> Walker v. People, 192 Ill. 106, 61 N. E. 489; Tyson v. State, 28 Md. 577; State v. Henderson, 160 Mo. 190, 60 S. W. 1093; Pullen v. Wake County Commrs., 66 N. C. 361; State v. Guilbert, 70 Ohio St. 229, 1 Ann. Cas. 25, 71 N. E. 636; Eyre v. Jacob, 14 Gratt. (Va.) 422, 73 Am.

No express constitutional authority is requisite in order to empower a state legislature to lay an inheritance tax. The power to tax is an inherent incident of the power to legislate, and it is necessary, so far as concerns the authority of the legislature to impose inheritance taxes, only that the constitution does not, either expressly or by necessary implication, prohibit such taxation; and the enumeration in the constitution of certain subjects of taxation should not be construed as such a prohibition. This is obvious in view of the familiar principle that constitutions are not, as to the several commonwealths of the Union, grants of power, but restrictions upon powers otherwise unlimited, and the law-making branch of a state government may legislate on any subject and enact any law not inhibited by the constitution of the state or of the United States.\*

Dec. 367; *Magoun v. Illinois Trust etc. Bank*, 170 U. S. 283, 42 L. Ed. 1037, 18 Sup. Ct. Rep. 594; *Knowlton v. Moore*, 178 U. S. 41, 44 L. Ed. 969, 20 Sup. Ct. Rep. 747.

"We entertain no doubt," says the New York court of appeals, "that such a tax can be constitutionally imposed. The power of the legislature over the subject of taxation, except as limited by constitutional restriction, is unbounded. It is for that body, in the exercise of its discretion, to select the objects of taxation. It may impose all the taxes upon lands, or all upon personal property, or all upon houses or upon incomes. It may raise revenue by capitation taxes, by special taxes upon carriages, horses, dogs, franchises and upon every species of property, and upon all kinds of business and trades": *Estate of McPherson*, 104 N. Y. 306, 58 Am. Rep. 502, 10 N. E. 685.

\* *Estate of Booth v. Commonwealth*, 130 Ky. 88, 33 L. R. A., N. S., 592, 113 S. W. 61; *Garth v. Switzler*, 143 Mo. 287, 60 Am. St. Rep. 653, 40 L. R. A. 280, 45 S. W. 245; *State v. Vinsonhale*, 74 Neb. 675, 105 N. W. 472; *State v. Vinsonhale* (Neb.), 133 N. W. 472; *State v. Clark*, 30 Wash. 439, 71 Pac. 20.

A constitutional provision that taxes shall be levied on such property as the legislature shall prescribe does not, by the rule of exclusion, prevent a tax on privileges—at least where the constitutional debates indicate that it was not intended to deal with the taxation of privileges, and the practical construction for many years has assumed that it did not: *Nunnemacher v. State*, 129 Wis. 190, 9 Ann. Cas. 711, 9 L. R. A., N. S., 121, 108 N. W. 627.



§ 15. **Express Constitutional Provisions.**—An act taxing inheritances and testamentary gifts in certain cases does not change the law of descent, which the constitution provides shall not be done by special law.<sup>3</sup> Such an act is essentially and avowedly a tax law, and has none of the features of an intestate law or of an act regulating the disposition of property by will.<sup>4</sup>

A statute taxing inheritances does not deprive of property without due process in that it declares the right of the state to its portion of the inheritance is vested on the death of the owner, where the statute provides a means of ascertaining the amount of the tax and for notice and appraisement.<sup>5</sup>

An excise upon the right to receive property by devise or inheritance is a tax within the meaning of the constitutional provisions that taxes shall be levied for public purposes only.<sup>6</sup> But since an inheritance tax is imposed upon the succession rather than upon the property itself, it has been held not to contravene a constitutional limitation upon the rate of taxation of property for state purposes.<sup>7</sup>

The provision, found in some constitutions, that every law imposing a tax "shall distinctly state the tax and the object to which it is to be applied," has no application to inheritance taxes. It applies to the annual recurring taxes imposed generally upon the entire property of the state. The inheritance tax is of a permanent nature. It is always uncertain upon whom it will fall and how much revenue it will pro-

<sup>3</sup> Estate of Magnes, 32 Colo. 527, 77 Pac. 853.

<sup>4</sup> Estate of Cope, 191 Pa. 1, 71 Am. St. Rep. 749, 45 L. B. A. 316, 43 Atl. 79.

<sup>5</sup> Trippet v. State, 149 Cal. 521, 8 L. R. A., N. S., 1210, 86 Pac. 1084.

<sup>6</sup> State v. Switzler, 143 Mo. 287, 65 Am. St. Rep. 653, 40 L. B. A. 280, 45 S. W. 245.

<sup>7</sup> Estate of Magnes, 32 Colo. 527, 77 Pac. 853.

duce. It would be impossible for the legislature, perhaps years in advance, to specify the particular objects to which the tax should be applied.\*

§ 16. **Constitutionality of Federal Tax.**—The authority of a state legislature to impose inheritance taxes cannot be doubted, unless limited by the state or United States constitution, for it is a familiar principle that state legislatures have plenary power in matters legislative save as restricted by the organic law; but the authority of Congress to impose such taxes has been questioned, not only because the United States is a government of granted powers only, but because of the peculiar provisions regarding taxation in the national constitution. This instrument divides federal taxes into two classes, direct and indirect, and declares that direct taxes shall be “apportioned,” and that indirect taxes shall be “uniform.” It has been decided that inheritance taxes are not direct, but indirect, taxes in the nature of duties or excises, and therefore the constitutional rule of “apportionment” has no application to them. It has further been decided that inheritance taxes, notwithstanding their peculiar features in the matter of progressive rates and discrimination between properties of different values and persons of different degrees of relationship, are “uniform,” and do not offend the constitutional rule of uniformity nor the fundamental principles of equality and justice. It has been argued, however, that the authority to lay an inheritance tax arises solely from the power to regulate the transmission of property of decedents, a function exclusively within the dominion of the several states; and no doubt the utterances of many

\* *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101; *Estate of McPherson*, 104 N. Y. 315, 58 Am. Rep. 502, 10 N. E. 685; *Estate of McKennan*, 25 S. D. 369, 126 N. W. 611, 130 N. W. 33.

courts lend themselves to such an interpretation. But the supreme court of the United States has placed the power to lay such a tax on the broader ground that it does not arise solely from the right to regulate the transmission of property, but from the general authority to impose tax upon all objects within the jurisdiction of the taxing power.\*

**§ 17. Constitutionality of Municipal Ordinance.**—There appears to be no constitutional objection to the legislature, if it sees fit, investing municipal corporations with authority to impose inheritance taxes. But a grant of such authority will not be assumed unless made in clear or express terms; it will not be inferred from the ordinary grant to municipal corporations of power to raise revenue by taxing subjects, whether persons or property, within their jurisdiction. It is to be noted in this connection that inheritance taxes are imposed on the succession, rather than on the person or the property. Hence courts are not inclined to construe a general delegation of power to tax persons and property as embracing power to tax inheritances.<sup>10</sup>

**§ 18. Unconstitutionality of Certain Statutes.**—Quite a number of statutes imposing inheritance taxes have been declared unconstitutional, but this has been due to peculiar provisions in some of the state constitutions limiting the power of taxation, or to vicious provisions in the inheritance statutes themselves

\* *Knowlton v. Moore*, 178 U. S. 41, 44 L. Ed. 969, 20 Sup. Ct. Rep. 747; *Snyder v. Bettman*, 190 U. S. 249, 47 L. Ed. 1035, 23 Sup. Ct. Rep. 803.

<sup>10</sup> *Town of Wytheville v. Johnson*, 108 Va. 589, 128 Am. St. Rep. 981, 18 L. R. A., N. S., 960, 62 S. E. 328. This question has also been considered by the Virginia court in the earlier cases of *Peters v. Lynchburg*, 76 Va. 927; *Estate of Schoolfield v. Lynchburg*, 78 Va. 366.

which offend general constitutional principles.<sup>11</sup> In overthrowing these statutes the courts concede that an inheritance tax can be constitutionally imposed, and probably all of the states whose statutes have been condemned as unconstitutional have since enacted inheritance tax laws which the courts have upheld.

**§ 19. Rule of Uniformity and Equality.**—The provision common to most, if not all, of the constitutions of the various states, that taxation shall be uniform and equal, does not apply to inheritance taxes, since they are imposed on the transmission of or succession to property rather than on the property itself. The legislature may discriminate between relatives, and between relatives and strangers; it may grant exemptions based on the value of the property, the degree of relationship of the parties, and the character of the donee as a charitable or benevolent institution, without offending the constitutional requirement of uniformity and equality in taxation. Classification is permissible, and the rule of uniformity and equality is complied with if all members of the same class are treated alike. Within the boundaries of this limitation lie broad fields of legislative discretion which courts cannot invade.<sup>12</sup>

<sup>11</sup> *Ferry v. Campbell*, 110 Iowa, 290, 50 L. R. A. 92, 81 N. W. 604; *Chambe v. Durfee*, 100 Mich. 112, 58 N. W. 661; *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101; *State v. Gorman*, 40 Minn. 232, 2 L. R. A. 701, 41 N. W. 948; *Drew v. Tift*, 79 Minn. 175, 79 Am. St. Rep. 446, 47 L. R. A. 525, 81 N. W. 839; *State v. Bazille*, 87 Minn. 500, 94 Am. St. Rep. 718, 92 N. W. 415; *State v. Harvey*, 90 Minn. 180, 95 N. W. 764; *State v. Switzler*, 143 Mo. 287, 65 Am. St. Rep. 653, 40 L. R. A. 280, 45 S. W. 245; *Curry v. Spencer*, 61 N. H. 624, 60 Am. St. Rep. 337; *State v. Ferris*, 53 Ohio St. 314, 30 L. R. A. 218, 41 N. E. 579; *Estate of Cope*, 191 Pa. 1, 71 Am. St. Rep. 749, 45 L. R. A. 316, 43 Atl. 75; *State v. Mann*, 76 Wis. 469, 45 N. W. 526, 46 N. W. 51; *Black v. State*, 113 Wis. 205, 90 Am. St. Rep. 853, 89 N. W. 522.

<sup>12</sup> *In re House Bill No. 122*, 23 Colo. 492, 48 Pac. 535; *Kochersperger v. Drake*, 167 Ill. 122, 41 L. R. A. 446, 47 N. E. 321; *Booth v. Common-*

**§ 20. Guaranty of Equal Protection.**—The contention has been made, unsuccessfully, however, that the progressive rates of inheritance taxation, the discrimination between relatives of different degrees of relationship and the exemption of estates of limited value are in violation of the equal protection guaranteed by the federal constitution. To quote from the supreme court of the United States: "The clause of the fourteenth amendment especially evoked is that which prohibits a state denying to any citizen the equal protection of the laws. What satisfies this equality has not been, and probably never can be, precisely defined. . . . It may be safely said that the rule prescribes no rigid equality, and permits to the

wealth, 130 Ky. 88, 33 L. R. A., N. S., 592, 113 S. W. 61; *State v. Hamlin*, 86 Me. 495, 41 Am. St. Rep. 569, 25 L. R. A. 632, 30 Atl. 76; *Estate of Fox*, 154 Mich. 5, 117 N. W. 558; *Thompson v. Kidder*, 74 N. H. 89, 12 Ann. Cas. 948, 65 Atl. 392; *Estate of McPherson*, 104 N. Y. 306, 58 Am. Rep. 502, 10 N. E. 685; *Estate of Lord*, 186 N. Y. 549, 79 N. E. 1110, affirmed in *Lord v. Glynn*, 211 U. S. 477, 53 L. Ed. 290, 29 Sup. Ct. Rep. 186; *State v. Guilbert*, 70 Ohio St. 229, 1 Ann. Cas. 25, 71 N. E. 636; *Estate of Hickok*, 78 Vt. 259, 6 Ann. Cas. 578, 62 Atl. 724; *Dixon v. Ricketts*, 26 Utah, 215, 72 Pac. 947; *Estate of Schoolfield v. City of Lynchburg*, 78 Va. 366; *Nunnemacher v. State*, 129 Wis. 190, 9 Ann. Cas. 711, 9 L. R. A., N. S., 121, 108 N. W. 627.

The power of the legislature to classify the beneficiaries of estates of decedents, both according to relationship and according to the value of the property received, is upheld. And the right to create exemptions is conceded: *Estate of Fox*, 154 Mich. 5, 117 N. W. 558.

"An inheritance tax is not one on property, but one on the succession. The right to take property by devise or descent is the creature of the law, and not a natural right—a privilege, and therefore the authority which confers it may impose conditions upon it. From these principles it is deduced that the states may tax the privilege, discriminate between relatives, and between these and strangers, and grant exemptions, and are not precluded from this power by the provisions of the respective state constitutions requiring uniformity and equality of taxation": *Magoun v. Illinois Trust etc. Bank*, 170 U. S. 283, 42 L. Ed. 1037, 18 Sup. Ct. Rep. 594; *Estate of Magnes*, 32 Colo. 527, 77 Pac. 853; *State v. Clark*, 30 Wash. 439, 71 Pac. 20.

In answering an objection to the New York statute that it taxes transfers only of one character, exempting others, the court of appeals says: "The right and power of governments to single out certain classes of

discretion and wisdom of the state a wide latitude as far as interference by this court is concerned. . . . The rule, therefore, is not a substitute for municipal law; it only prescribes that that law have the attribute of equality of operation, and equality of operation does not mean indiscriminate operation on persons merely as such, but on persons according to their relation. In some circumstances it may not tax A more than B, but if A be of a different trade or profession than B, it may. And in matters not of taxation, if A be a different kind of corporation than B, it may subject A to a different rule of responsibility to servants than B. . . . In other words, the state may distinguish, select, and classify objects of legislation,

objects for taxation, leaving other classes exempt or taxed at a different rate or in a different manner, is unquestionable. Such power has been exercised by all governments from the earliest times. It is subject, however, to the qualification that the classification must not be so purely arbitrary as to have no reason, not even an insufficient or merely plausible reason, to justify it": *Estate of Keeney*, 194 N. Y. 281, 87 N. E. 428, affirmed, *Keeney v. New York*, 222 U. S. 525, 56 L. Ed. —, 32 Sup. Ct. Rep. 105.

To the same effect, see the able presentation of the subject in *Estate of McKennan* (S. D.), 130 N. W. 33; *Estate of Fox*, 154 Mich. 5, 117 N. W. 558.

To quote from the Colorado court: "A careful investigation will disclose that, with few exceptions, where similar questions have been raised in other states and in the supreme court of the United States, an inheritance or succession tax has been held not to come within the purview of the uniformity and equality clause of state constitutions, and that the power to impose the same is to be found in the sovereign power of taxation which the state possesses to the fullest degree, except as limited in its organic act. In these decisions substantially every objection as to the lack of uniformity and equality, and the alleged arbitrary and unjust discriminations which these provisions are said to exhibit, and that they contravene various sections of our bill of rights affecting the property rights of citizens, have been considered and decided adversely to the contention of counsel for plaintiff in error": *Estate of Magnes*, 32 Colo. 527, 77 Pac. 853.

"Since the tax is imposed upon the privilege of receiving or taking property," said the Montana court, "and not upon the property itself, and since the privilege is itself not a natural right, but a creature of

and necessarily this power must have a wide range of discretion. It is not without limitation, of course.

"Two principles, therefore, must be reconciled in the Illinois inheritance law if it is to be sustained, the equality of protection of the laws guaranteed by the fourteenth amendment, and the power of the state to classify persons and property. The latter principle needs further consideration. What test is there of the reasonableness of a classification—of one based upon 'some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection'? Legislation special in character is not forbidden by it, as we have seen. . . . There is therefore no precise application of the rule of

law, it follows as a corollary that, except so far as it is clearly restricted by the constitution, the legislature may impose such burdens upon it as it may see fit. The legislature is not restricted in this regard by the provision of the constitution requiring equality and uniformity in the levy of ordinary taxes upon property, nor for the same reason is its power restricted by the provision prescribing a maximum rate for state taxation; nor, again, by the provision invoked here, fixing the valuation of a certain class of property or those providing for exemptions. In *Plummer v. Coler*, 178 U. S. 115, 44 L. Ed. 928, 20 Sup. Ct. Rep. 829, it was held that a legacy of United States bonds is not exempt from the inheritance tax imposed by the laws of the state of New York, though the bonds are themselves exempt from taxation in any form for ordinary purposes by or under authority of any state. This conclusion was arrived at after a review of the decisions from many of the states. To the same effect are the decisions of the states generally. If specific exemptions from taxation for ordinary revenue purposes do not, under the theory of these cases, apply, it must necessarily follow that an arbitrary method of valuation provided for in the constitution with reference to a certain class of property for ordinary purposes does not include the privilege to take by will, succession, or testamentary grant": *Estate of Tuohy*, 35 Mont. 431, 90 Pac. 170.

In *State v. Switzler*, 143 Mo. 287, 65 Am. St. Rep. 653, 40 L. R. A. 280, 45 S. W. 245, and *Estate of Cope*, 191 Pa. 1, 71 Am. St. Rep. 749, 45 L. R. A. 316, 43 Atl. 79, statutes imposing inheritance taxes were held unconstitutional for want of uniformity as to persons or properties belonging to the same class.

In Minnesota the constitutional provision requiring equality of taxation applies to inheritance taxes exactly as it does to taxes on property,

reasonableness of classification, and the rule of equality permits many practical inequalities. And necessarily so. In a classification for governmental purposes there cannot be an exact exclusion or inclusion of persons and things. Bearing these considerations in mind we can solve the question in controversy. There are three main classes in the Illinois statute, the first and second being based, respectively, on lineal and collateral relationship to the testator or intestate, and the third being composed of strangers to his blood and distant relatives. The latter is again divided into four subclasses dependent upon the amount of the estate received. The first two classes, therefore, depend on substantial differences, differences which may distinguish them from each other and them or either of them from the other class—differences, therefore, which ‘bear a just and proper relation to the attempted classification.’ . . . . And if the constituents of each class are affected alike, the rule of equality prescribed by the cases is satisfied. In other words, the law operates ‘equally and uniformly upon all persons in similar circumstances.’

“Nor do the exemptions of the statute render its operation unequal within the meaning of the fourteenth amendment. . . . . The provisions of the statute in regard to the tax on legacies to strangers to the

except as therein otherwise expressly provided, and statutes providing for such taxes, to be valid, must include all inheritances, devises, bequests of every description, including those of both real and personal property, and they must be uniform and apply equally to all persons, whether collateral or lineal descendants: *Drew v. Tift*, 79 Minn. 175, 79 Am. St. Rep. 448, 47 L. R. A. 525, 81 N. W. 839; *State v. Bazille*, 87 Minn. 500, 94 Am. St. Rep. 718, 92 N. W. 415. In this last case the statute of Minnesota is held unconstitutional because it operates unequally between collateral, and also as between collateral and lineal, descendants, transfers to the former being taxed to the full value, when such value exceeds five thousand dollars, whereas as to lineal descendants the tax is imposed only upon the excess over and above a fixed valuation of five thousand dollars.



blood of an intestate need further comment. . . . There are four classes created, and manifestly there is equality between the members of each class. Inequality is only found by comparing the members of one class with those of another. It is illustrated by appellant as follows: One who receives a legacy of \$10,000 pays three per cent, or \$300, thus receiving \$9,700 net, while one receiving a legacy of \$10,001 pays four per cent on the whole amount, or \$400.04, thus receiving \$9,600.96, or \$99.04 less than the one whose legacy was actually one dollar less valuable. . . . If there is unsoundness it must be in the classification. The members of each class are treated alike; that is to say, all who inherit \$10,000 are treated alike—all who inherit any other sum are treated alike. There is equality, therefore, within the classes. If there is inequality it must be because the members of a class are arbitrarily made such and burdened as such upon no distinctions justifying it. . . . But neither case can be said to be contrary to the rule of equality of the fourteenth amendment. That rule does not require, as we have seen, exact equality of taxation. It only requires that the law imposing it shall operate on all alike under the same circumstances. The tax is not on money; it is on the right to inherit, and hence a condition of inheritance, and it may be graded according to the value of that inheritance. The condition is not arbitrary because it is determined by that value; it is not unequal in operation because it does not levy the same percentage on every dollar; does not fail to treat 'all alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed.' " <sup>18</sup>

<sup>18</sup> *Magoun v. Illinois Trust etc. Bank*, 170 U. S. 283, 42 L. Ed. 1037, 18 Sup. Ct. Rep. 594.

And in *Billings v. Illinois*,<sup>14</sup> it was assigned as error that the Illinois "statute is in contravention of the fourteenth amendment to the constitution of the United States of America, in that the classification of life tenants is arbitrary and unreasonable, and denies to the plaintiffs in error, as life tenants, the equal protection of the laws; because the statute, as interpreted and enforced by the state courts, taxes life estates where the remainder is to lineals, but does not tax, and expressly exempts, similar life estates where the remainder is to collaterals or to strangers in blood. . . . If there had been a proper classification there could not have been the denial of the equal protection of the laws, and we, therefore, expressed (in *Magoun v. Illinois Bank*) and illustrated the principle upon which it should be based. We said it was established by cases that classification must be based on some reasonable ground. It could not be a 'mere arbitrary selection.' But what is the test of an arbitrary selection? It is difficult to exhibit it precisely in a general rule. Classification is essentially the same in law as it is in other departments of knowledge or practice. It is the grouping of things in speculation or practice, because they 'agree with one another in certain particulars and differ from other things in those same particulars.' Things may have very diverse qualities and yet be united in a class. They may have very similar qualities and yet be cast in different classes. . . . If the purpose is within the legal powers of the legislature, and the classification made has relation to that purpose (excludes no persons or objects that are affected by the purpose, includes all that are), logically speaking, it will be appropriate; legally speaking, a law based upon it will

<sup>14</sup> *Billings v. Illinois*, 188 U. S. 97, 47 L. Ed. 400, 23 Sup. Ct. Rep. 872.

have equality of operation. . . . Undoubtedly, life tenants, regarded simply as persons, may be in legal contemplation the same; estates for life, regarded simply as estates with their attributes, also in legal contemplation, may be said to be the same, but that is not all that is to be considered, nor is it determinative. We must regard the power of the state over testate and intestate dispositions of property, its power to create and limit estates, and, as resulting, its power to impose conditions upon their transfer or devolution. It is upon this power that inheritance tax laws are based, and we said, in the Magoun case, that the power could be exercised by distinguishing between the lineal and collateral relatives of a testator. There the amount of tax depended upon him who immediately received; here the existence of the tax depends upon him who ultimately receives. That can make no difference with the power of the state. No discrimination being exercised in the creation of the class, equality is observed. Crossing the lines of the classes created by the statute, discrimination may be exhibited, but within the classes there is equality."

**§ 21. Discrimination Between Relatives.**—The legislature is competent, in imposing inheritance taxes, to discriminate between lineal and collateral relatives, exempting the former entirely or imposing upon them charges less burdensome than upon the collaterals; it may likewise discriminate against strangers to the blood of the decedent. This question of discrimination between persons of different degrees of relationship is one of legislative discretion, limited, if at all, only by the rule of reasonableness and propriety; and the validity of statutes providing for such discrimination has frequently been recognized. The classification thus effected is in accord with general sentiment,

and does not offend the constitutional rule of uniformity and equality.<sup>15</sup>

And the equal protection of the laws is not denied by a statute which subjects to the burdens of an in-

<sup>15</sup> *Estate of Wilmerding*, 117 Cal. 281, 49 Pac. 181; *Estate of Campbell*, 143 Cal. 623, 77 Pac. 674; *Estate of Magnes*, 32 Colo. 527, 77 Pac. 853; *Appeal of Nettleton*, 76 Conn. 235, 56 Atl. 565; *Billings v. State*, 189 Ill. 472, 59 L. R. A. 807, 59 N. E. 798; *Booth v. Commonwealth*, 130 Ky. 88, 33 L. R. A., N. S., 592, 113 S. W. 61; *State v. Hamlin*, 86 Me. 495, 41 Am. St. Rep. 569, 25 L. R. A. 632, 30 Atl. 76; *Tyson v. State*, 28 Md. 577; *State v. Dalrymple*, 70 Md. 294, 3 L. R. A. 372, 17 Atl. 82; *Minot v. Winthrop*, 162 Mass. 113, 26 L. R. A. 259, 38 N. E. 512; *Union Trust Co. v. Wayne Probate Judge*, 125 Mich. 487, 84 N. W. 1101; *State v. Bazille*, 97 Minn. 11, 7 Ann. Cas. 1056, 6 L. R. A., N. S., 732, 106 N. W. 93; *State v. Vance*, 97 Minn. 532, 106 N. W. 98; *State v. Henderson*, 160 Mo. 190, 60 S. W. 1093; *Gelsthorpe v. Furnell*, 20 Mont. 299, 39 L. R. A. 170, 51 Pac. 267; *Thompson v. Kidder*, 74 N. H. 89, 12 Ann. Cas. 948, 65 Atl. 392; *Opinion of the Justices (N. H.)*, 79 Atl. 490; *Estate of McPherson*, 104 N. Y. 306, 58 Am. Rep. 502, 10 N. E. 685; *Estate of Patterson*, 146 App. Div. 286, 130 N. Y. Supp. 970; *Pullen v. Commissioners of Wake Co.*, 66 N. C. 361; *Hagerty v. State*, 55 Ohio St. 613, 45 N. E. 1046; *State v. Alston*, 94 Tenn. 674, 28 L. R. A. 178, 30 S. W. 750; *Eyre v. Jacob*, 14 Gratt. (Va.) 422, 72 Am. Dec. 367; *State v. Clark*, 30 Wash. 439, 71 Pac. 20; *Nunnemacher v. State*, 129 Wis. 190, 9 Ann. Cas. 711, 9 L. R. A., N. S., 121, 108 N. W. 627; *Wallace v. Myers*, 38 Fed. 184, 4 L. R. A. 171; *Magoun v. Illinois Trust etc. Bank*, 170 U. S. 283, 42 L. Ed. 1037, 18 Sup. Ct. Rep. 594.

It has the sanction of nearly all the states that have levied taxes of this kind, and has a sanction in reason, for the moral claim of collaterals and strangers is less than that of kindred in a direct line, and the privilege is therefore greater: *Minot v. Winthrop*, 162 Mass. 113, 26 L. R. A. 259, 38 N. E. 512.

"In the absence of constitutional prohibition the legislature is supreme, and may dispose of an intestate decedent's estate, after payment of his debts, to any class or classes of his kindred, to the exclusion of any class or classes. It may limit heirship to lineal descendants, to the absolute exclusion of all collaterals. If it permits collateral kindred to inherit, no reason is perceived why the state is debarred from exacting an excise or duty from such collateral, for such privilege allowed by the state. It is necessary to make such excise uniform as to the entire class of collaterals. It must not tax one and exempt another in the same class. But it is not a violation of this principle to require an excise from all collaterals and strangers, and exempt from the excise classes nearer in blood to the decedent. . . . An excise tax upon the

heritance tax the brothers and sisters of a decedent, while exempting therefrom strangers to the blood, such as the wife or widow of a son or the husband of a daughter of the decedent.<sup>16</sup> In upholding this provision of the California statute the supreme court of the United States<sup>17</sup> uses this language: "The contention is that the assailed law of California was repugnant to the fourteenth amendment, because it subjected to the burdens of an inheritance tax or charge brothers and sisters of a decedent, and did not subject to any burden such strangers to the blood as the wife or widow of a son or the husband of a daughter of a decedent.

"We do not stop to refer in detail to the many forms of argument by which the contention is sought to be sustained, but content ourselves with stating that, whatever be the form in which the propositions relied on are advanced, they all reduce themselves to, and must depend upon, the soundness of the contention that the fourteenth amendment compels the states, in levying inheritance taxes, and, a fortiori, in regulating inheritances, to conform to blood relationship. That is to say, in their last analysis all

value of the property so allowed to be received by the collateral or stranger to the blood leaves him in much better condition than an absolute withdrawal of the privilege would": *State v. Hamdin*, 86 Me. 495, 41 Am. St. Rep. 569, 25 L. R. A. 632, 30 Atl. 76.

"Inheritance" and "taxation" have no necessary connection as subjects of legislation, and the legislature having plenary authority in reference to each of these subjects is not required to consider them together, nor to shape its legislation concerning one with reference to the other, nor to observe the same classification for purposes of taxation that is made for purposes of inheritance: *Estate of Wilmerding*, 117 Cal. 281, 49 Pac. 181.

A statute exempting stepchildren from inheritance taxation is constitutional: *Commonwealth v. Randall*, 225 Pa. 197, 73 Atl. 1109.

<sup>16</sup> *Estate of Campbell*, 143 Cal. 627, 77 Pac. 674, affirmed in 200 U. S. 87, 50 L. Ed. 382, 26 Sup. Ct. Rep. 182.

<sup>17</sup> *Campbell v. California*, 200 U. S. 87, 50 L. Ed. 382, 26 Sup. Ct. Rep. 182.

the arguments depend upon the proposition that the fourteenth amendment has taken away from the states their power to regulate the passage of property by death or the burdens which may be imposed resulting therefrom, because that amendment confines the states absolutely, both as to the passage of such property and as to the burdens imposed thereon, to the rule of blood relationship. To state the proposition is to answer it. Its unsoundness is demonstrated by previous decisions of this court.<sup>18</sup> It is true that in the first of the cited cases it was expressly declared or impliedly recognized that in the exercise by a state of its undoubted power to regulate the burdens which might be imposed on the passage of property by death, a case might be conceived of where a burden would be so arbitrary as to amount to a denial of the equal protection of the laws. But this suggestion did not imply that the effect of the fourteenth amendment was to control the states in the exercise of their plenary authority to regulate inheritances and to determine the persons or objects upon which an inheritance burden should be imposed. In this case there can be no doubt, if the right of a state be conceded to select the persons who may inherit or upon whom the burden resulting from an inheritance may be imposed, the complaint against the statute is entirely without merit.

“The whole case, therefore, must rest upon the assumption that because the state of California has not followed the rule of blood relationship, but as to particular classes has applied the rule of affinity by marriage, therefore the constitutional provision guaranteeing the equal protection of the laws was violated. But, unless the effect of the fourteenth

<sup>18</sup> *Magoun v. Illinois Trust etc. Bank*, 170 U. S. 283, 43 L. Ed. 1037, 18 Sup. Ct. Rep. 594; *Orient Ins. Co. v. Daggs*, 172 U. S. 557, 43 L. Ed. 552, 19 Sup. Ct. Rep. 281.

amendment was inexorably to limit the states in enacting inheritance laws to the rule of blood relationship, such a regulation plainly involved the exercise of legislative discretion and judgment, with which the fourteenth amendment did not interfere. Such a regulation cannot in reason be said to be an exercise of merely arbitrary power. To illustrate: It assuredly would not be an arbitrary exercise of power for a state to put in one class, for the purpose of inheritance or the burdening of the privilege to inherit, all blood relatives to a designated degree, excluding brothers and sisters, and to place all other and more remote blood relatives, including brothers and sisters, in a second class along with strangers to the blood.

“This being true, it cannot, without causing the equality clause of the fourteenth amendment to destroy the powers of the states on a subject of a purely local character, be held that a classification which takes near relatives by marriage and places them in a class with lineal relatives is so arbitrary as to transcend the limits of governmental power. If this were not true, state legislation preferring a wife in the distribution of the estate of her husband to a brother or sister of the husband would be void as repugnant to the fourteenth amendment. So, also, would be the provision in the California statute we are considering, preferring an adopted child of a decedent to a brother or sister. With the motives of public policy which may induce a state to prefer near relatives by affinity to collateral relatives, we are not concerned, since the fourteenth amendment does not deprive a state of the power to regulate and burden the right to inherit, but at the most can only be held to restrain such an exercise of power as would exclude the conception of judgment and discretion, and which

would be so obviously arbitrary and unreasonable as to be beyond the pale of governmental authority."<sup>19</sup>

**§ 22. Discrimination Against Nonresidents.**—In imposing inheritance taxes a disposition is in some instances manifested to discriminate against nonresidents and aliens.<sup>19a</sup> The exemption usually accorded gifts to charitable institutions are generally denied where the gifts are to foreign corporations; and statutes thus excluding such corporations from the exemption do not abridge the privileges or immunities of the citizens of the United States, nor deny the equality of the laws. Foreign and domestic corporations naturally fall into two classes, and the legislature has not far to look to discover various valid reasons for favoring the latter. And corporations are not "citizens" within the meaning of the provision of the constitution of the United States that the citizens of each state shall be entitled to all the privileges or immunities of the citizens of the several states.<sup>20</sup>

A collateral inheritance tax law exempting nephews and nieces of the decedent who are residents of the

<sup>19</sup> *Campbell v. California*, 200 U. S. 87, 50 L. Ed. 382, 26 Sup. Ct. Rep. 182.

<sup>19a</sup> As to the right of an alien or nonresident, if not "aggrieved," to question the constitutionality of an inheritance tax statute, see *Estate of Damon*, 10 Cal. App. 542, 102 Pac. 684; *Estate of Johnson*, 139 Cal. 534, 96 Am. St. Rep. 161, 73 Pac. 425.

The equal protection of the laws is not denied by the New York statute imposing taxes upon certain bequests of personalty by a non-resident owning both real and personal property within the state, because, under the statute as construed by the state courts, the tax cannot be collected if the only property belonging to the decedent situated within the state is personalty: *Beers v. Glynn*, 211 U. S. 477, 53 L. Ed. 290, 29 Sup. Ct. Rep. 186.

<sup>20</sup> *Estate of Speed*, 216 Ill. 23, 108 Am. St. Rep. 189, 74 N. E. 809, affirmed in 203 U. S. 553, 8 Ann. Cas. 157, 51 L. Ed. 314, 27 Sup. Ct. Rep. 171; *Humphreys v. State*, 70 Ohio St. 67, 101 Am. St. Rep. 888, 1 Ann. Cas. 233, 65 L. R. A. 776, 70 N. E. 957. The Ohio court holds that a statute imposing an inheritance tax upon foreign charitable cor-



state does not conflict with the provision of the federal constitution that the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states; but, by virtue of that provision, the exemption must be accorded to nephews and nieces who are citizens of any of the sister states, leaving, as subject to the tax, all other nephews and nieces, aliens and citizens of the United States, who are not citizens of any particular state.<sup>21</sup>

§ 23. **Discrimination Against Aliens.**—There are, between the United States and many nations of the world, treaty provisions touching the transmission of property situated in this country to alien heirs, devisees, and legatees. The effect of such provisions on the right of the several states to impose inheritance taxes on transfers to aliens, and, in doing so, to discriminate against them, will be considered in a subsequent chapter.<sup>22</sup> In the absence of any treaty restrictions, there is no doubt that a state may, in the exercise of its power to regulate the manner and the terms upon which real and personal property within its boundaries may be transmitted by last will and testament or by inheritance or succession, impose an inheritance tax upon transmissions of property within its dominion to aliens, even though no such tax is imposed on transmissions to citizens.<sup>23</sup>

The supreme court of the United States, in affirming a decision of the supreme court of Louisiana,

porations operating to some extent within the state, as to property received by them therein by gift, bequest, or devise, is not unconstitutional as an unlawful discrimination against them or as denying them the equal protection of the law.

<sup>21</sup> *Estate of Johnson*, 139 Cal. 532, 96 Am. St. Rep. 161, 73 Pac. 424, overruling *Estate of Mahoney*, 133 Cal. 180, 85 Am. St. Rep. 155, 65 Pac. 389.

<sup>22</sup> Secs. 190–197, post.

<sup>23</sup> *State v. Poydras*, 9 La. Ann. 165; *Succession of Schaffer*, 13 La. Ann. 113; *Succession of Sala*, 50 La. Ann. 1009, 24 South. 674; *Prevost*

wherein an early statute of that state imposing a succession tax on nonresidents of the state or of the United States was upheld in its application to a resident and citizen of France, said through Justice Taney: "The law in question is nothing more than an exercise of the power which every state and sovereignty possesses, of regulating the manner and terms upon which property real or personal within its dominion may be transmitted by last will and testament or by inheritance, and of prescribing who shall and who shall not be capable of taking it. Every state or nation may unquestionably refuse to allow an alien to take either real or personal property situated within its limits, either as heir or legatee, and may, if it thinks proper, direct that property so descending or bequeathed shall belong to the state. In many of the states of this Union at this day, real property devised to an alien is liable to escheat. And if a state may deny the privilege altogether, it follows that, when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy. This has been done by Louisiana. The right to take is given to the alien, subject to a deduction of ten per cent for the use of the state. In some of the states laws have been passed at different times imposing a tax similar to the one now in question upon its own citizens as well as foreigners; and the constitutionality of these laws has never been questioned. And if a state may impose it upon its own citizens, it will hardly be contended that aliens are entitled to exemption; and that their property in our own country is not liable to the same burdens that may lawfully be imposed upon that of our own citizens. We can see no objection to such a tax, whether im-

v. *Greeneaux*, 60 U. S. (19 How.) 1, 15 L. Ed. 572, affirming 12 La. Ann. 577; *Frederickson v. Louisiana*, 64 U. S. (23 How.) 445, 16 L. Ed. 577.

posed upon citizens and aliens alike or upon the latter exclusively. It certainly has no concern with commerce, or with imports or exports. It has been suggested, indeed, in the argument, that, as the legatee resided abroad, it would be necessary to transmit to her the proceeds of the portion of the estate to which she was entitled, and that the law was therefore a tax on imports. But if that argument was sound, no property would be liable to be taxed in a state, when the owner intended to convert it into money and send it abroad.”<sup>24</sup>

**§ 24. Exemption of Estates of Limited Value.**—Most, if not all, inheritance tax laws exempt from their operation estates below a certain value. A larger exemption is usually made in case of direct inheritances than is allowed to inheritances by collaterals or strangers. There is no constitutional objection to this form of inequality, and the validity of statutes creating such exemptions has been recognized repeatedly. It is peculiarly within the province of the legislature to declare what privileges shall be taxed and what exemptions shall be allowed; and obviously the exemption of small estates is not arbitrary or without reason, for thereby the tax is made to rest most lightly on those least able to bear the burden. The administration expenses alone, in the case of estates of limited value, are burdensome enough, being generally much larger proportionately than for large estates.<sup>25</sup>

<sup>24</sup> *Majer v. Grima*, 49 U. S. (8 How.) 490, 12 L. Ed. 1168, affirming 12 Rob. (La.) 584.

<sup>25</sup> *Estate of Wilmerding*, 117 Cal. 281, 49 Pac. 181; *Estate of Stanford*, 126 Cal. 112, 45 L. R. A. 788, 54 Pac. 259, 58 Pac. 462; *Estate of Magnes*, 32 Colo. 527, 77 Pac. 853; *Appeal of Nettleton*, 76 Conn. 235, 56 Atl. 565; *Ferry v. Campbell*, 110 Iowa, 290, 50 L. R. A. 92, 81 N. W. 604; *State v. Hamlin*, 86 Me. 495, 41 Am. St. Rep. 569, 25 L. R. A. 632, 30 Atl. 76; *Minot v. Winthrop*, 162 Mass. 113, 26 L. R. A. 259,

§ 25. **Exemption of Charities.**—The exemption from inheritance taxation of gifts to charitable, educational, or religious institutions, while perhaps of

38 N. E. 512; *Union Trust Co. v. Wayne Probate Judge*, 125 Mich. 487, 84 N. W. 1101; *State v. Bazille*, 97 Minn. 11, 7 Ann. Cas. 1056, 6 L. R. A., N. S., 732, 106 N. W. 93; *Gelsthorpe v. Furnell*, 20 Mont. 299, 39 L. R. A. 170, 51 Pac. 267; *Pullen v. Commissioners of Wake Co.*, 66 N. C. 361; *State v. Guilbert*, 70 Ohio St. 229, 71 N. E. 636; *State v. Alston*, 94 Tenn. 674, 28 L. R. A. 178, 30 S. W. 750; *State v. Clark*, 30 Wash. 439, 71 Pac. 20; *High v. Coyne*, 93 Fed. 450.

A statute exempting transfers of personal property to lineals when it falls under two thousand dollars in value, and taxing the whole amount if the value is over two thousand dollars, is not unconstitutional: *Estate of Fox*, 154 Mich. 5, 117 N. W. 558.

In *State v. Guilbert*, 70 Ohio St. 229, 1 Ann. Cas. 25, 71 N. E. 636, the court says: "The specific complaint is that this act does not prescribe or preserve the rule of equality and uniformity of burden in taxation prescribed by the constitution, in that it exempts from its operation all inheritances which do not exceed three thousand dollars in value, and imposes the burden on such as are above that sum. We think there are two answers to this objection: The person who inherits six thousand dollars has three thousand dollars exempt; the person who inherits three thousand dollars has three thousand dollars exempt. They are on a perfect equality in that regard. The same reasoning applies where it happens that the smaller inheritance falls below three thousand dollars. As well might it be urged that the law which exempts from execution homesteads of the heads of families of one thousand dollars in value is invalid on the ground of inequality of privilege, because one debtor's homestead may not reach one thousand dollars in value, while that of another may. It is to be borne in mind that the act does not create a classification of persons for the purpose of imposing a tax on that class. It is not a tax on persons at all. If it is felt more by some than by others, this is owing merely to the fact of the differing circumstances which surround the different persons. No person nor no set of persons is selected arbitrarily or otherwise for the imposition of burdens or for relieving of burdens. But beyond this, when it is determined, as it was determined in *State v. Ferris*, 53 Ohio St. 314, 30 L. R. A. 218, 41 N. E. 579, that the tax is an excise tax, and, as in *Hagerty v. State*, 55 Ohio St. 613, 45 N. E. 1046, that the authority to impose the tax is conferred by the general grant of legislative power, then the selection of the subjects on which the tax will be imposed must be within the legislative competency. Those inheritances which do not exceed three thousand dollars in value are not embraced in the class included within the purview of the law, and unless it can be shown that such exclusion results in a violation of the rights of those who are included, or that such discrimination is forbidden by some provision of

doubtful expediency, is a matter committed to the discretion of the legislature; and all, or nearly all, of the American statutes contain this exemption, and their constitutionality has not, it is believed, ever been

the constitution, the discrimination referred to is not unlawful. We think it cannot be so shown. To say that the mere fact of inclusion in the one case and exclusion in the other constitutes a reason for holding the law invalid is to say that no excise tax can be lawfully laid upon any privilege until all privileges on which it would be possible to lay such tax have been included within its terms. If this proposition were established, it is difficult to see why it would not invalidate all the excise laws of the state, many of which have been subjected to judicial scrutiny and have been sustained."

In *Minot v. Winthrop*, 162 Mass. 113, 26 L. E. A. 259, 38 N. E. 512, the court says: "It is also contended that the tax is unreasonable on account of the exemption contained in the proviso of the first section of the statute, that no estate shall be subject to the provisions of this act unless the value of the same, after the payment of all debts, shall exceed the sum of ten thousand dollars. In all, or nearly all, systems of taxation, there are some exemptions, but the objection here is that estates whose value, after payment of all debts, shall not exceed ten thousand dollars, are exempt, without regard to the value of the property received by the devisees, legatees, heirs, or distributees. It is argued that the excise, if upon the privilege of taking property by will or descent, should be the same whenever the privilege enjoyed is the same, in kind and extent, whatever may be the value of the estate, and that the exemptions should relate to the value of the property received by those who have the privilege of receiving it, and not to the value of the estate. But the right or privilege taxed can, perhaps, be regarded either as the right or privilege of the owner of property to transmit it on his death, by will or descent, to certain persons, or as the right or privilege of these persons to receive the property. The tax, too, has some of the characteristics of a duty on the administration of the estates of deceased persons. The cost of administering small estates is proportionately greater than that of administering large ones, and this, of itself, particularly in intestate estates, operates to diminish the amounts received very much as a tax would. The statutes of the different states and nations which have levied taxes on devises, legacies, and inheritances have usually made exemptions, and these have sometimes related to the value of the estates, and sometimes to the value of the property received by the heirs, devisees, legatees, or distributees. The exemption in the statute under consideration is certainly large as an exemption of estates; but it is peculiarly within the discretion of the legislature to determine what exemptions should be made in apportioning the burdens of taxation among those who can best bear them, and we are not

denied.<sup>26</sup> The Missouri statute, imposing a collateral inheritance tax, but exempting bequests for charities without limiting the amount thereof, does not violate the provisions of the constitution of that state which prohibits laws exempting property held for charitable purposes from taxation in excess of a specified amount, for an inheritance tax is not a tax on property.<sup>27</sup> The statutes of other states have been held not unconstitutional because excluding foreign charitable corporations from the exemption.<sup>28</sup>

**§ 26. Progressive Rate of Taxation.**—The progressive theory of inheritance taxation, whereby the tax rate is made to increase with the value of the estate transmitted, has come into especial prominence since its adoption by Great Britain in the finance act of 1894. In some of the American states the progressive rate is applied to both direct and collateral heirs, while in others it is applied only to distant relatives and strangers. Although this system of taxation results in a measure of inequality, it is supported by the authorities generally, and is not repugnant to constitutional principles. Authority to make the tax progressive in accordance with the size of the estate

satisfied that this exemption is so clearly unreasonable as to require us to declare the statute void."

In *Black v. State*, 113 Wis. 205, 90 Am. St. Rep. 853, 89 N. W. 522, it is decided that when a statute imposing inheritance taxes undertakes to exempt therefrom all estates whose value is less than ten thousand dollars, the beneficiaries being of the same class, and the tax being levied without regard to the amount received by the individual beneficiary, the classification is arbitrary, and the statute therefore unconstitutional.

<sup>26</sup> *Thompson v. Kidder*, 74 N. H. 89, 12 Ann. Cas. 948, 65 Atl. 392.

<sup>27</sup> *State v. Henderson*, 160 Mo. 190, 60 S. W. 1093.

<sup>28</sup> *Estate of Speed*, 216 Ill. 23, 108 Am. St. Rep. 189, 74 N. E. 809, affirmed in 203 U. S. 553, 8 Ann. Cas. 157, 51 L. Ed. 314, 27 Sup. Ct. Rep. 171; *Humphreys v. State*, 70 Ohio St. 67, 101 Am. St. Rep. 888, 1 Ann. Cas. 233, 65 L. R. A. 776, 70 N. E. 957,

is based upon the wholesome doctrine that the ability to pay is the true basis of all taxation.<sup>29</sup>

When the validity of a progressive tax imposed by federal government was challenged in *Knowlton v. Moore*, the supreme court observed: "The review which we have made exhibits the fact that taxes imposed with reference to the ability of the person upon whom the burden is placed to bear the same have been levied from the foundation of the government. So, also, some authoritative thinkers and a number of economic writers contend that a progressive tax is more just and equal than a proportional one. In the absence of constitutional limitation, the question whether it is or is not is legislative and not judicial.

<sup>29</sup> *State v. Handlin* (Ark.), 139 S. W. 1112; *Estate of Magnas*, 32 Colo. 527, 77 Pac. 853; *Appeal of Nettleton*, 76 Conn. 235, 56 Atl. 565; *Kochersperger v. Drake*, 167 Ill. 122, 41 L. R. A. 446, 47 N. E. 321; *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101; *State v. Bazille*, 97 Minn. 11, 7 Ann. Cas. 1056, 6 L. R. A., N. S., 732, 106 N. W. 93; *State v. Vinsonhaler*, 74 Neb. 675, 105 N. W. 472; *State v. Clark*, 30 Wash. 439, 71 Pac. 20; *Nunnemacher v. State*, 129 Wis. 190, 9 Ann. Cas. 711, 9 L. R. A., N. S., 121, 108 N. W. 627.

In this last case the Wisconsin court said: "The question has been met in other courts, and it has been held with substantial uniformity that the progressive feature does not violate the general guaranties of equality and equal protection of the laws contained in the various state constitutions and in the fourteenth amendment to the constitution of the United States: *Knowlton v. Moore*, 178 U. S. 41, 44 L. Ed. 969, 20 Sup. Ct. Rep. 747. The decision of the supreme court of the United States as to the force of the fourteenth amendment is necessarily conclusive; and, as the general equality guaranties of our own constitution are substantially the equivalent of the equal protection of the laws guaranteed by the fourteenth amendment, we are content to follow the decisions of the United States supreme court, and hold the progressive feature does not violate the constitution."

This question is ably discussed by the South Dakota court in *Estate of McKennan* (S. D.), 130 N. W. 33, where it is held that a method of progression whereby the higher rate, in the case of larger estates, is levied upon the whole value of the property submitted, rather than merely on the excess in value over the amount subject to the next lower rate, does not violate the constitutional requirement that all taxation shall be equal and uniform.

The grave consequences which it is asserted must arise in the future, if the right to levy a progressive tax be recognized, involves in its ultimate aspect the mere assertion that free and representative government is a failure, and that the grossest abuses of power are foreshadowed unless the courts usurp a purely legislative function. If a case should ever arise where an arbitrary and confiscatory exaction is imposed bearing the guise of a progressive or any other form of tax, it will be time enough to consider whether the judicial power can afford a remedy by applying inherent and fundamental principles for the protection of the individual, even though there be no express authority in the constitution to do so. That the law which we have construed affords no ground for the contention that the tax imposed is arbitrary and confiscatory is obvious.”<sup>20</sup>

**§ 27. Double Taxation in Case of Nonresidence.—**It not infrequently happens that personal property suffers a species of double taxation by reason of the circumstance that it is actually situated in one state while the owner dies domiciled in another state. In such event the actual situs of the property is seized upon by the first state as warranting the imposition of an inheritance tax, and the legal situs of the property at the domicile of the decedent is taken as authorizing the imposition of another inheritance tax by the latter state. Indeed, the same state may assume either position, as the domicile of the deceased or the presence of his personalty within the state may require, in order to collect the tax. This form of double taxation, however unjust it may seem, and into whatever inconsistencies it may lead the taxing author-

<sup>20</sup> *Knowlton v. Moore*, 178 U. S. 41, 44 L. Ed. 969, 20 Sup. Ct. Rep. 747.



ities, is not opposed to constitutional principles,<sup>81</sup> but it is being departed from in some of the states. For instance, the West Virginia statute, which is fairly representative of other recent statutes, now provides:

“A transfer of personal property of a resident of the state which is not therein at the time of his death shall not be taxable, under the provisions of this act, if such transfer or the property be legally subject in another state or country to a tax of a like character and amount to that hereby imposed, and if such tax be actually paid, or guaranteed or secured, in accordance with law in such other state or country; if legally subject in another state or country to a tax of like character, but of less amount than that hereby imposed, and such tax be actually paid, or guaranteed or secured, as aforesaid, the transfer of such property shall be taxable under this act to the extent of the difference between the tax thus actually paid, guaranteed or secured, and the amount for which such transfer would otherwise be liable hereunder. A transfer of personal property of a nonresident decedent which is within this state at the time of his death, if subject to a tax of a like character, with that imposed by this act, by the law of the state or country of his residence, shall be subject only to such portion of the tax hereby imposed by the laws of such state or country; provided, a like exemption is made by the laws of such other state or country in favor of estates or citizens of this state, and the transfer thereof, but no such exemption shall be allowed until such tax provided for by the law of such other state or country shall be actually paid, guaranteed or

<sup>81</sup> Estate of Stanton, 142 Mich. 491, 105 N. W. 1122; Douglas County v. Kountze, 84 Neb. 506, 121 N. W. 593; Blackstone v. Miller, 188 U. S. 189, 47 L. Ed. 439, 23 Sup. Ct. Rep. 277. See the chapter on “Situs of Property for Purposes of Taxation,” post, section 170 et seq.

secured, in accordance with law. A receipt or certificate from the officer of such other state or country charged with the duty of collection of such tax, or the acceptance of such guaranty or security, shall be prima facie evidence in this state of the fact of such payment, guaranty or security.”<sup>22</sup>

**§ 28. Detention of Property in Safe Deposit.—**There are statutes which forbid safe deposit companies, on the death of a lessee of a box or safe, from delivering the contents to his heirs or personal representatives, except after ten days' notice to the state treasurer and attorney general, or other designated officers of the government, and requiring such corporations to retain a sufficient portion of such contents to pay the inheritance tax on the property on deposit or in safekeeping. Failure to obey the law renders the deposit company liable for the tax itself and for a heavy penalty besides. These statutes are not unconstitutional as applied to safe deposit companies and other corporations doing a similar business. Nor are they unconstitutional when applied to lessees of safe deposit boxes and their heirs and representatives, even in cases where boxes are rented jointly by two or more persons or by a partnership, and one of the partners or joint lessees dies. The enforcement of the law may result in delay and inconvenience to heirs and legatees, but delay is necessarily incident to the settlement and distribution of the estate of a decedent. And when the interests of the state are considered, it does not seem unreasonable that it should, through its proper representative, be given opportunity to protect itself from loss of revenue through the withdrawal and concealment or transfer of securities and other valuable assets. The

<sup>22</sup> See West Virginia statute, post.

heirs and legatees are not the only parties interested. The money received by the state in the form of inheritance taxes constitutes a part of the public revenue, and the right of the state to those taxes vests, in point of time, at the time the estate vests, that is, upon the death of the decedent. Therefore, the state has a vested financial right in the estate of every deceased person which is subject to the payment of the inheritance tax, and this right is equal in degree to that of the personal representatives, the heirs, or the legatees of the decedent, and it vests at the same moment of time when their interests vest. Statutory provisions which require the representative of the state to have notice of the time when property held by safe deposit companies, the former owners of which are deceased, is to be surrendered and removed and delivered to the personal representative, heir or legatee of the decedent, are not an unreasonable measure for the protection of the state from the loss of property to which it has a vested right; and they do not invade the constitutional rights, either of the safe deposit companies or of the representatives, heirs, and legatees.<sup>22</sup>

<sup>22</sup> National Safe Deposit Co. v. Stead, 250 Ill. 584, Ann. Cas. 1912B, —, 95 N. E. 973.

## CHAPTER III.

## INTERPRETATION OF STATUTES.

- § 33. Statutes Adopted from Another State.
- § 34. Statutes in *Pari Materia*.
- § 35. Strict or Liberal Construction.
- § 36. Law Governing Tax—Retrospective Operation.
- § 37. Constitutionality of Tax Imposed Pending Administration.
- § 38. Law Governing Estates in Remainder.
- § 39. Law Governing Remainders—Constitutional Questions.
- § 40. Law Governing Powers of Appointment.
- § 41. Amendatory Act.
- § 42. Curative Act.
- § 43. Repeal and Re-enactment of Statute.
- § 44. Repeal of United States Statute.

§ 33. **Statutes Adopted from Another State.**—It is a familiar canon of construction that when one state adopts a statute of another state it is presumed to adopt the construction previously placed upon the statute by the courts of the latter, but is not bound by their decisions rendered after the adoption of the statute. Such subsequent decisions will be given respectful consideration, but they are persuasive only, and entitled to no greater weight than may be due to the reasoning found therein.<sup>1</sup> These rules are applicable where one state adopts the inheritance tax statute of another state.<sup>2</sup> And where the provisions of the inheritance tax statutes of two states are in substance the same, the decisions of the courts of one

<sup>1</sup> *Germania Life Ins. Co. v. Ross-Lewin*, 24 Colo. 43, 65 Am. St. Rep. 215, 51 Pac. 488; *Nicollet Nat. Bank v. City Bank*, 38 Minn. 85, 8 Am. St. Rep. 643, 35 N. W. 577; *Pratt v. Miller*, 109 Mo. 78, 32 Am. St. Rep. 656, 18 S. W. 965; *Stadler v. First Nat. Bank*, 22 Mont. 190, 74 Am. St. Rep. 582, 56 Pac. 111; *In re O'Connor*, 21 R. I. 465, 79 Am. St. Rep. 814, 44 Atl. 591; *Wyoming Coal Min. Co. v. State*, 15 Wyo. 97, 123 Am. St. Rep. 1014, 87 Pac. 337, 984.

<sup>2</sup> *People v. Griffith*, 245 Ill. 532, 92 N. E. 313; *Miller v. McLaughlin*, 141 Mich. 425, 104 N. W. 777.

of the states construing the law will be resorted to by the courts of the other state for aid in reaching the proper interpretation to be placed upon the law.<sup>3</sup>

§ 34. **Statutes in Pari Materia.**—Another well-recognized rule of construction is, that when divers statutes relate to the same thing, all should be taken into consideration in construing any one of them; acts in *pari materia* are to be taken together as if they were one law.<sup>4</sup> And statutes on cognate subjects, though not strictly in *pari materia*, may be referred to in order to elucidate the intention of the legislature in enacting any given statute.<sup>5</sup> Accordingly, it has been contended that when there has been no previous decision in the state on a question involved in the interpretation of an inheritance tax statute, such as the situs of the property, the rulings of the highest court of the state on the general tax laws should be not only persuasive but controlling. But the Illinois court has held against this contention, saying: "One of the chief reasons given in support of the legality of inheritance taxes has been that they are not 'taxes' in the strict sense of the term. This law has no relation to the general revenue law. The

<sup>3</sup> *State v. Pabst*, 139 Wis. 561, 121 N. W. 351.

<sup>4</sup> *Pryor v. Winter*, 147 Cal. 554, 109 Am. St. Rep. 162, 82 Pac. 202; *Wilson v. Donaldson*, 117 Ind. 356, 10 Am. St. Rep. 48, 3 L. R. A. 266, 20 N. E. 250; *Russ v. Commonwealth*, 210 Pa. 544, 105 Am. St. Rep. 825, 1 L. R. A., N. S., 409, 60 Atl. 169.

"Statutes are in *pari materia* which relate to the same person or thing, or to the same class of persons or things. The word '*par*' must not be confounded with the term '*similis*.' It is used in opposition to it, as in the expression '*magis pares sunt quam similes*'; intimating not likeness merely, but identity. It is a phrase applicable to the public statutes or general laws, made at different times and in reference to the same subject": *United Society v. Eagle Bank*, 7 Conn. 456, 468.

<sup>5</sup> *State v. Frederickson*, 101 Me. 37, 115 Am. St. Rep. 295, 8 Ann. Cas. 48, 6 L. R. A., N. S., 186, 63 Atl. 535; *St. Louis v. Howard*, 119 Mo. 41, 41 Am. St. Rep. 630, 24 S. W. 770.

two acts cannot be held to be in *pari materia*. 'While the object of both is to raise revenue for the support of the government, they have nothing else in common.' They were passed at different times, and upon entirely different theories. One taxes the property itself, and the other the right of succession to the property.'"<sup>6</sup>

**§ 35. Strict or Liberal Construction.**—The statement is not infrequently met with, in the opinions of courts, that inheritance tax laws should be construed strictly against the government and liberally in favor of the taxpayer; that the government is bound to express its intention to tax in clear and unambiguous language; and that in case of doubt or ambiguity arising on the terms of the statute, every intendment is indulged against the taxing power.' No satisfactory reason, however, has been advanced for such a rule, and it is doubtful, indeed, whether the rule has, to any considerable extent, been observed. One would suppose that such laws, like any other statutes, should be given a reasonable and liberal interpretation with a view to effectuate the intention of the legislature. And it is gratifying to note that whatever the courts may have said on this question, they have, in fact, generally given inheritance tax statutes a liberal con-

<sup>6</sup> *People v. Griffith*, 245 Ill. 532, 92 N. E. 313.

<sup>7</sup> *People v. Koenig*, 37 Colo. 283, 11 Ann. Cas. 140, 85 Pac. 1129; *Matter of Stewart*, 131 N. Y. 274, 14 L. R. A. 836, 30 N. E. 184; *Estate of Harbeck*, 161 N. Y. 211, 55 N. E. 850; *Estate of Kimberly*, 27 App. Div. 470, 50 N. Y. Supp. 586; *Estate of Kerr*, 159 Pa. 512, 28 Atl. 354; *Bailey v. Henry* (Tenn.), 143 S. W. 1124; *Eidman v. Martinez*, 184 U. S. 578, 46 L. Ed. 697, 22 Sup. Ct. Rep. 515; *Disston v. McClain*, 147 Fed. 114, 77 C. C. A. 340; *Lynch v. Union Trust Co.*, 164 Fed. 161, 90 C. C. A. 147.

The rule of strict construction, ordinarily applied to the operation and effect of a statute imposing a tax and to proceedings thereunder, does not apply to the Minnesota statute imposing a tax on inheritances: *State v. Bazille*, 97 Minn. 11, 7 Ann. Cas. 1056, 6 L. R. A., N. S., 732, 106 N. W. 93.

struction in favor of the government by subjecting to taxation every transfer that could reasonably be brought within the purview of the law, as the decisions will hereinafter abundantly attest.

Said the New York court of appeals, in construing the statute of that state: "It was undoubtedly the intent of the legislature that the statute under consideration should be liberally construed, to the end of taxing the transfer of all property which fairly and reasonably could be regarded as subject to the same, and this court has unequivocally placed itself upon record in favor of construing the statute in the light of such intent."<sup>\*</sup> This language correctly reflects the attitude of the New York courts and legislature on this question, for it seems to have been the policy of that state to exert its taxing power over inheritance to the utmost and to allow no transfers to escape the imposition of a tax unless the statute clearly exempts them. And this policy is by no means confined to the state of New York alone.

**§ 36. Law Governing Tax—Retrospective Operation.**—The rights and obligations of all parties in regard to the payment of an inheritance tax are ordinarily determinable as of the time of the death of the decedent. It is at that time that the title to the property passes to the heirs, devisees and legatees, and that the right of the public to the tax accrues, although actual enjoyment is postponed by the delays incident to the administration of the estate. The occasion for the tax being the devolution of property, it should usually attach to such interests only as arise by reason of a death subsequent to the passage of the act imposing the tax. The statute is not given a retrospective

<sup>\*</sup> *Estate of Gordon*, 186 N. Y. 471, 10 L. R. A., N. S., 1089, 79 N. E. 722.

operation, so as to reach estates of persons who have died before its enactment, unless its terms clearly demand such an interpretation.\* But the method of

\* *Winn v. Schenck*, 33 Ky. Law Rep. 615, 110 S. W. 827; *Succession of Deyraud*, 9 Rob. (La.), 357; *Succession of Becker*, 118 La. 1056, 43 South. 701, *Howe v. Howe*, 179 Mass. 546, 55 L. R. A. 626, 61 N. E. 225; *McCurdy v. McCurdy*, 197 Mass. 248, 14 Ann. Cas. 859, 16 L. R. A., N. S., 329, 83 N. E. 881; *Pierce v. Stevens*, 205 Mass. 219, 91 N. E. 319; *Carter v. Whitcomb*, 74 N. H. 482, 17 L. R. A., N. S., 733, 69 Atl. 779; *Estate of Hartman*, 70 N. J. Eq. 664, 62 Atl. 560; *Matter of Pell*, 171 N. Y. 48, 89 Am. St. Rep. 791, 57 L. R. A. 540, 63 N. E. 789; *Matter of Lansing*, 182 N. Y. 238, 74 N. E. 882; *Estate of Ramsdill*, 190 N. Y. 492, 18 L. R. A., N. S., 946, 83 N. E. 584; *In re Forsyth*, 10 Misc. Rep. 477, 32 N. Y. Supp. 175; *Eury v. State*, 72 Ohio St. 448, 74 N. E. 650; *Pennsylvania Co. for Ins. etc. v. McLain*, 105 Fed. 367, affirmed in 108 Fed. 618, 47 C. C. A. 529; *Carpenter v. Pennsylvania*, 58 U. S. (17 How.) 456, 15 L. Ed. 127.

The provisions of the Louisiana constitution and statutes touching the liability for an inheritance tax do not extend or reach back to conditions anterior to the constitution itself. The constitution looks to the present and to the future, not to the past: *Succession of Westfeldt*, 122 La. 836, 48 South. 281.

The present statute (1905) of Minnesota has no application to property which was actually sold and disposed of prior to the time of its enactment: *State v. Probate Court of Washington County*, 102 Minn. 268, 113 N. W. 888.

The Iowa statute reads: "All property . . . which shall pass by will, or by the intestate laws of this or any other state, or by deed, grant, sale, or gift made or intended to take effect in possession or enjoyment after the death of the grantor or donor," to persons other than those described, "shall be subject to a tax. . . . The tax aforesaid shall be and remain a lien on such estate from the death of the decedent until paid." Said the Iowa court, in construing this statute, "the only fair construction to be given this language is that it refers to property which shall thereafter pass, and, if so, the tax is not exacted on any which has been previously transferred by any of the modes mentioned. It is not material to this inquiry whether we say the property is taxed because of the succession thereto by collateral heirs, or that the right of succession merely is taxed; for in either event the right to the property attached eo instante upon the decedent's death, and is not within the terms of the statute. This view is in harmony with the construction usually given similar enactments": *Gilbertson v. Ballard*, 125 Iowa, 420, 2 Ann. Cas. 607, 101 N. W. 108.

The collateral inheritance tax law of Iowa contains no provisions making it retrospective, or applicable to any interest in property which became vested prior to its taking effect, even though such interests may



procedure for the ascertainment and determination of the tax is controlled by the statute in force at the time of the institution of the proceeding, although the tax itself and the rights of the parties are controlled by an earlier statute.<sup>9a</sup>

It has been held that a statute imposing a collateral inheritance tax does not apply to property devised by one who dies before the statute takes effect, but whose will is not filed for probate until after that time;<sup>10</sup> and that personal property of a nonresident who dies before the tax law becomes operative is not subject thereto, although the property remains within the state until after that time.<sup>11</sup>

It has been decided that an inheritance tax statute has no application to interests in land passing to heirs prior to its taking effect, although the heirs have not asserted their rights or gone into possession until after the statute has gone into effect; and that bequests of personal property, made in a will probated before the taking effect of the statute, are not subject to the tax, although the estate may remain unsettled and the legacies unpaid until after the statute has become operative.<sup>12</sup>

be subject to conditions or contingencies which will affect their future enjoyment: *Morrow v. Depper* (Iowa), 133 N. W. 729.

Where there is a statute imposing a succession tax enacted before the death of a decedent, and another enacted afterward, the former controls: *State v. Switzler*, 143 Mo. 287, 65 Am. St. Rep. 653, 40 L. R. A. 280, 45 S. W. 245.

The amount of a collateral inheritance tax to be paid by those succeeding to an estate is to be determined by the statute in force at the time of the death of the decedent: *Estate of Woodward*, 153 Cal. 39, 94-Pac. 242.

<sup>9a</sup> *Estate of Jarvis*, 149 N. Y. 539, 44 N. E. 185; *Estate of Sloane*, 159 N. Y. 109, 47 N. E. 978.

<sup>10</sup> *In re Collateral Inheritance Tax*, 88 Me. 587, 34 Atl. 530.

<sup>11</sup> *Estate of Pettit*, 65 App. Div. 30, 72 N. Y. Supp. 469, affirmed in 171 N. Y. 654, 63 N. E. 1121.

<sup>12</sup> *Herriott v. Potter*, 115 Iowa, 648, 89 N. W. 91; *Gilbertson v. Ballard*, 125 Iowa, 420, 2 Ann. Cas. 607, 101 N. W. 108; *Lacey v. State*

**§ 37. Constitutionality of Tax Imposed Pending Administration.**—It is well understood that on the death of the owner of property the title thereto is cast immediately upon his heirs or devisees. The distributive shares, although their amount may be uncertain, the time of their enjoyment contingent, and their full enjoyment postponed by the process of administration, vest instantly in the beneficiaries of the decedent upon his death. It may therefore seem that after the title to property has thus vested in heirs or devisees, free from an inheritance tax, that an attempt by the legislature thereafter to impose such a tax before distribution of the estate would be opposed to constitutional principles. And yet when it is remembered that the tax is on the privilege of succession, that such privilege exists only by virtue of legislative permission and protection, that the privilege is not fully exercised nor the right to the enjoyment of the property fully realized until the administration of the estate is closed, it would seem that the legislature has authority to put in operation such a tax after the death of the decedent but before the estate is distributed. In fact, it has been recognized by a number of courts that an inheritance can be imposed by act of the legislature pending the settlement of the estate and prior to delivery to the distributees, without interfering with vested rights or violating the rule of due process of law.<sup>13</sup> The Iowa

Treasurer (Iowa), 132 N. W. 843; *Estate of Cogswell*, 4 Dem. Sur. (N. Y.) 248.

<sup>13</sup> *Succession of Levy*, 115 La. 377, 5 Ann. Cas. 871, 8 L. R. A., N. S., 1180, 39 South. 37, affirmed in *Cahen v. Brewster*, 203 U. S. 543, 8 Ann. Cas. 215, 51 L. Ed. 313, 27 Sup. Ct. Rep. 174; *Succession of Stauffer*, 119 La. 66, 43 South. 928; *Gelsthorpe v. Furnell*, 20 Mont. 299, 39 L. R. A. 170, 51 Pac. 267; *Estate of Vanderbilt*, 50 App. Div. 246, 63 N. Y. Supp. 1079, affirmed in 163 N. Y. 597, 57 N. E. 1127; *Estate of Short*, 16 Pa. 63; *Estate of Howard*, 80 Vt. 489, 68 Atl. 513. Several of the above decisions are cited in the recent case of *Attorney General v. Stone*, 209 Mass.

court has admitted that this is true in regard to personal property, but doubts whether it can be applied to real estate, under the common-law notion, still prevalent in some jurisdictions, that although real property vests in the heirs instantly on the death of the ancestor, personal property is held in abeyance in the hands of the executor or administrator.<sup>14</sup> In a recent opinion<sup>15</sup> of the Iowa court is a dictum approving the holding of the New York court of appeals, that a statute imposing a succession or transfer tax upon estates which vested prior to its enactment is unconstitutional, as diminishing the value of vested estates, impairing the obligation of contract, and taking private property for public use without compensation.<sup>16</sup>

Said the supreme court of the United States in *Cahen v. Brewster*:<sup>17</sup> "The tax was defined in the *Perkins* case<sup>18</sup> to be 'not a tax upon the property itself, but upon its transmission by will or descent'; and in the *Magoun* case,<sup>19</sup> 'not one on property, but one on the succession.' In *Knowlton v. Moore*<sup>20</sup> it was said that such taxes 'rest in their essence upon the prin-

186, 95 N. E. 395, where the Massachusetts statute of 1902, regulating the assessment of collateral taxes as to estates limited after a preceding estate, is held to operate retrospectively as well as prospectively. See also, *Lacey v. State Treasurer* (Iowa), 121 N. W. 179, 132 N. W. 843.

<sup>14</sup> *Ferry v. Campbell*, 110 Iowa, 290, 50 L. R. A. 92, 81 N. W. 604; *Herriott v. Potter*, 115 Iowa, 648, 89 N. W. 91.

<sup>15</sup> *Lacey v. State Treasurer* (Iowa), 132 N. W. 843.

<sup>16</sup> *Matter of Pell*, 171 N. Y. 48, 89 Am. St. Rep. 791, 57 L. R. A. 540, 63 N. E. 789; *Matter of Chapman*, 133 App. Div. 337, 117 N. Y. Supp. 679.

<sup>17</sup> *Cahen v. Brewster*, 203 U. S. 543, 8 Ann. Cas. 215, 51 L. Ed. 313, 27 Sup. Ct. Rep. 174.

<sup>18</sup> *United States v. Perkins*, 163 U. S. 625, 41 L. Ed. 287, 16 Sup. Ct. Rep. 1073.

<sup>19</sup> *Magoun v. Illinois Trust & Sav. Bank*, 170 U. S. 283, 42 L. Ed. 1037, 18 Sup. Ct. Rep. 594.

<sup>20</sup> *Knowlton v. Moore*, 178 U. S. 41, 44 L. Ed. 969, 20 Sup. Ct. Rep. 747.

ciple that death is the generating source from which the particular taxing power takes its being, and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested.' But these definitions were intended only to distinguish the tax from one on property, and it was not intended to be decided that the tax must attach at the instant of the death of a testator or intestate. In other words, we defined the nature of the tax; we did not prescribe the time of its imposition. To have done the latter would have been to prescribe a rule of succession of estates, and usurp a power we did not and do not possess. There is nothing, therefore, in those cases which restrains the power of the state as to the time of the imposition of the tax. It may select the moment of death, or it may exercise its power during any of the time it holds the property from the legatee. 'It is not,' we said in the Perkins case,<sup>21</sup> 'until it has yielded its contribution to the state that it becomes the property of the legatee.' " This decision was rendered of the statute of Louisiana, and under the law of that state the legacies in question passed to the legatees upon the death of the testator.

**§ 38. Law Governing Estates in Remainder.**—The question as to what law, in point of time, governs the imposition of inheritance taxes on estates in remainder has frequently been before the New York courts for determination. It has been decided in that state, and in some others, that estates in remainder are taxable as of the time of the death of the donor, notwithstanding the actual possession or enjoyment by the beneficiary is postponed until the expiration of the life estate and may perhaps fail entirely; and if there

<sup>21</sup> *United States v. Perkins*, 163 U. S. 625, 41 L. Ed. 287, 16 Sup. Ct. Rep. 1078.

is no statute imposing a tax at the time of such death, the transfer is immune from taxation."<sup>22</sup>

"It is now well settled," to quote from the supreme court of New York, "that the tax is upon the transfer of the property, upon the right of succession, not upon the property itself; that 'transfer' means the passing of property, or of any interest therein, in possession or enjoyment, present or future, without regard to whether the actual possession and enjoyment follows immediately or comes at some future time; that where a vested, though defeasible, interest in remainder passes under a will to the remainderman on the testator's death, though the possession does not pass until the death of the life tenant, the transfer or succession is referred to the time of the death of the testator, and if that occurred prior to the enactment of the act taxing transfers of property, the remainder is not taxable." "<sup>23</sup>

Referring to this question the supreme court of Iowa,<sup>24</sup> in a recent decision, uses this language: "It has been held without any apparent conflict in the authorities that an interest in property created by will or deed in the nature of a remainder becomes a vested interest from the time the will or deed takes effect,

<sup>22</sup> *Commonwealth v. Stoll*, 132 Ky. 234, 114 S. W. 279, 116 S. W. 687; *Miller v. McLaughlin*, 141 Mich. 425, 104 N. W. 777; *Estate of Pell*, 171 N. Y. 48, 89 Am. St. Rep. 791, 57 L. B. A. 540, 63 N. E. 789; *Estate of Langdon*, 11 App. Div. 220, 43 N. Y. Supp. 419, affirmed in 153 N. Y. 6, 46 N. E. 1034; *Estate of Craig*, 97 App. Div. 289, 89 N. Y. Supp. 971, affirmed in 181 N. Y. 551, 74 N. E. 1116; *Estate of Backhouse*, 110 App. Div. 737, 96 N. Y. Supp. 466, 185 N. Y. 544, 77 N. E. 1181; *Estate of Haggerty*, 128 App. Div. 479, 112 N. Y. Supp. 1017, affirmed in 194 N. Y. 550, 87 N. E. 1120.

<sup>23</sup> *Estate of Hitchins*, 43 Misc. Rep. 485, 89 N. Y. 472 (affirmed in 101 App. Div. 612, 92 N. Y. Supp. 1128, 181 N. Y. 553, 74 N. E. 1118), citing *Matter of Seaman*, 147 N. Y. 69, 41 N. E. 401; *Matter of Stewart*, 131 N. Y. 274, 14 L. B. A. 836, 30 N. E. 184; *Matter of Curtis*, 142 N. Y. 219, 36 N. E. 887; *Matter of Langdon*, 153 N. Y. 6, 46 N. E. 1034.

<sup>24</sup> *Lacey v. State Treasurer (Iowa)*, 132 N. W. 843.

and that a subsequent collateral inheritance tax statute has no application to it. Thus, where a will creates a remainder subject to a life estate, with an added power given to the life tenant to dispose of the property if he shall elect to do so, the interest of the remainderman is vested as against a subsequent inheritance tax statute, although it may not be possible to determine until the end of the life estate, and after the taking effect of the statute, what portion, if any, of the property will be left for enjoyment by the remainderman: *Estate of Langdon*; *Estate of Lansing*; *Winn v. Schenck*.<sup>25</sup> Even though the remainder is so far conditional that it may have to be opened up to let in after-born children, and, on the other hand, may be divested by death without issue of the person named, nevertheless it constitutes a vested interest, not subject to a subsequent collateral inheritance tax statute, passed before the termination of the life estate: *Estate of Seaman*.<sup>26</sup>

**§ 39. Law Governing Remainders—Constitutional Questions.**—This statement accurately reflects the law as interpreted by the courts of New York. In fact, it has been decided in that state that a statute providing for an inheritance tax on remainders and reversions which have already vested, upon their coming into actual enjoyment or possession, is unconstitutional because it diminishes the value of vested estates, impairs the obligation of a contract, and takes private property for public use without compensation.<sup>27</sup> The soundness of this doctrine is not entirely free from

<sup>25</sup> *Estate of Langdon*, 153 N. Y. 6, 46 N. E. 1034; *Estate of Lansing*, 182 N. Y. 238, 74 N. E. 882; *Winn v. Schenck*, 33 Ky. Law Rep. 615, 110 S. W. 827.

<sup>26</sup> *Estate of Seaman*, 147 N. Y. 69, 41 N. E. 401.

<sup>27</sup> *Matter of Pell*, 171 N. Y. 48, 89 Am. St. Rep. 791, 57 L. R. A. 540, 63 N. E. 789.

doubt. The privilege of succession is not fully exercised until the remainderman comes into the possession or enjoyment of the property, and until the happening of that event it is not unreasonable to hold that the power of the legislature to impose a tax exists.<sup>28</sup>

This view finds support in a recent Massachusetts decision.<sup>29</sup> In that state three changes were made in the statute imposing an inheritance tax on estates to take effect after the expiration of an estate for life or a term of years. The time for the payment of the tax was extended some years; the liability for its payment was put directly on the beneficiary of the decedent instead of upon the administrator; and the tax was to be assessed upon the value of the property at the time when the right of possession accrued to the beneficiary, and was to be paid by him upon coming into possession. The statute applied to the estates of persons deceased before its enactment, and its constitutionality was for that reason questioned, especially in that the time for determining the value of the property for the purpose of fixing the remaindermen's tax was postponed, so that in the particular case before the court such value had increased and the tax was made more burdensome.

This change, said the court, "aimed to do more exact justice both to the commonwealth and to taxable beneficiaries in remainder, by taxing them upon the real value of what they should receive rather than upon a value fixed by estimation which must be determined sometimes many years before their receipt of the property, and which could but rarely accord exactly with the real value of what afterward should

<sup>28</sup> As supporting this view, see *Succession of Stauffer*, 119 La. 66, 43 South. 928; *Gelsthorpe v. Furnell*, 20 Mont. 299, 39 L. R. A. 170, 51 Pac. 267; *Cahen v. Brewster*, 203 U. S. 543, 8 Ann. Cas. 215, 51 L. Ed. 213, 27 Sup. Ct. Rep. 174.

<sup>29</sup> *Attorney General v. Stone*, 209 Mass. 186, 95 N. E. 395.

come to them, which might sometimes so far exceed that real value as to subject them to an onerous and disproportionate burden, and in other cases might be materially less than that value, and so afford them a partial exemption, all of which might result in such an unjust discrimination as was condemned in *Succession of Pritchard*.<sup>20</sup> The statute substituted a valuation by the same uniform standard, the real value when the property came to the beneficiary, for an uncertain valuation to be made in advance of that time. . . . Such an alteration, designed and adapted to bring about uniformity of taxation by assessing the inheritance of each individual according to its value when he receives it, is not of itself beyond the power of the legislature in such a case as is now presented."

"This is an excise tax," continues the court, "imposed not only upon the right of the owner of property to transmit it after his death, but also upon the privilege of his beneficiaries to succeed to the property thus dealt with. The privilege is not fully exercised until the property shall have come into the possession of the beneficiary. Until the full exercise of such privilege and while as yet no tax has been assessed and paid thereon, we see no reason why, by a general rule applicable to all such cases, any pending liability to taxation may not be regulated so as to subject it to a just and uniform method of assessment, even though some change may thereby be made from the method previously adopted. This involves no infringement or impairment of vested rights; it causes no unjust discrimination by substituting a just and equal assessment based upon actual values for the necessarily uncertain and unequal determination by the opinions of appraisers, however expert, of future and contingent values. It does not deny to the re-

<sup>20</sup> *Succession of Pritchard*, 118 La. 883, 43 South. 537.



spondent the equal protection of the law; it applies the same rule to him as to all other persons in the same situation, and such cases as *James v. American Surety Company*<sup>21</sup> have no bearing. We cannot regard the statute as unconstitutional by reason of this change. Nor is it unconstitutional because it applied only to cases in which a succession tax remained unpaid.”<sup>22</sup>

**§ 40. Law Governing Powers of Appointment.**—The application of inheritance taxation to powers of appointment is attended with no little difficulty in the matter of determining what law, in point of time, shall control. The theory has prevailed in a number of jurisdictions that the source of the title is the instrument creating the power, into which the names of the appointees must be read, and their right of succession vests, not at the execution of the power, but at the time when the instrument which created it went into effect. Hence if a will creating a power of appointment became effective through the death of the testator prior to the enactment of a statute imposing inheritance taxes, bequests made in the exercise of the power after the enactment of such statute are not taxable. The donor of the power of appointment, rather than the donee, is regarded as the decedent whose estate is subject to taxation.<sup>23</sup>

The legislature of New York, evidently not satisfied with this interpretation, has amended the statute of that state so as to make it clear that the act constituting the transfer or succession is, for purposes of

<sup>21</sup> *James v. American Surety Co.*, 133 Ky. 313, 117 S. W. 406.

<sup>22</sup> *Attorney General v. Stone*, 209 Mass. 186, 95 N. E. 395.

<sup>23</sup> *Emmons v. Shaw*, 171 Mass. 410, 50 N. E. 1033; *Estate of Stewart*, 131 N. Y. 274, 14 L. R. A. 836, 30 N. E. 184; *Will of Harbeck*, 161 N. Y. 211, 55 N. E. 850; *Commonwealth v. Duffield*, 12 Pa. 277; *Commonwealth v. Williams*, 13 Pa. 29.

inheritance taxation, the execution of the power of appointment. This seems the more reasonable view, for whatever may be the technical source of the title of the donee under the power, it is undeniable that in reality and in substance it is the execution of the power that gives him the property. Under this theory of the law it is immaterial that there was no statute imposing an inheritance tax in force at the time when the original disposition of the property was made and the power created; it is the law in existence at the time when the power is executed that determines the liability of the donee under the power to pay a tax.

Therefore, if a testator devises property in trust for a life then in being, and provides that at the termination of that life it shall vest in the surviving children of that person and such of the issue of his deceased children as he may designate and appoint by his will, the property so passing by such appointment is subject to the inheritance tax, although at the time of the making of the original will there was no such tax as against the descendants of the testator.<sup>34</sup> And an inheritance tax is properly assessed upon the exercise, by last will and testament, of a power of appointment executed before the passage of any statute imposing a tax on the right of succession to the property of decedents.<sup>35</sup>

In Massachusetts, and other states also, the statutes now provide that, in case of a power of appointment, the inheritance taxation shall be in the same manner as though the property belonged absolutely to the donee of the power, and had by him been bequeathed or devised by will.<sup>36</sup> Formerly, however, the rule was

<sup>34</sup> *Matter of Dows*, 167 N. Y. 227, 88 Am. St. Rep. 508, 52 L. R. A. 433, 60 N. E. 439.

<sup>35</sup> *Estate of Delano*, 176 N. Y. 486, 64 L. R. A. 279, 68 N. E. 871.

<sup>36</sup> *Minot v. Stevens*, 207 Mass. 588, 33 L. R. A., N. S., 236, 93 N. E. 973.

different in Massachusetts, the donor of the power, rather than the donee, being regarded as the decedent whose estate was taxable.<sup>37</sup> And this former rule appears to have been approved in Kentucky.<sup>38</sup>

This question will be further considered in the chapter on "Powers of Appointment and Their Exercise."<sup>39</sup>

**§ 41. Amendatory Act.**—Since inheritance taxation is governed by the statute in force at the time of the death of the decedent, amendatory acts adopted after the death have no operation on pending administration, and no retrospective effect, unless the legislature clearly so intended, but the rights of the parties are determined by the statute as it stood at the date of the death.<sup>40</sup> Hence where gifts to charitable institutions are subject to taxation at the time of the testator's death, they are not relieved from the burden by a subsequent amendment to the statute exempting

<sup>37</sup> *Emmons v. Shaw*, 171 Mass. 410, 50 N. E. 1033.

<sup>38</sup> *Winn v. Schenck*, 33 Ky. Law Rep. 615, 110 S. W. 827, where the Kentucky court said: "In the case of *Emmons v. Shaw*, 171 Mass. 410, 50 N. E. 1033, the supreme court of Massachusetts passed upon a question somewhat similar. There one Thomas B. Wales had devised certain property to his son, George W. Wales, for life, subject to his disposition by will, but, in the event that he died intestate, with further limitations as to the fee. The son disposed of the property by will under the power, and, an inheritance law having been adopted after the death of his father but before his death, an effort was made to collect the tax from his property. The court declined to enforce it, and, in so doing, said: 'What is done under a power of appointment is to be referred to the instrument by which the power is created, and operates as a disposition of the estate of the donor.'"

<sup>39</sup> See post, secs. 78-86.

<sup>40</sup> *State v. Switzler*, 143 Mo. 287, 65 Am. St. Rep. 653, 40 L. R. A. 280, 45 S. W. 245; *Carter v. Whitcomb*, 74 N. H. 482, 17 L. R. A., N. S., 733, 69 Atl. 779; *Estate of Graves*, 34 Misc. Rep. 677, 70 N. Y. Supp. 727, order reversed in 66 App. Div. 267, 72 N. Y. Supp. 815; *Estate of Brooks*, 6 Dem. Sur. (N. Y.) 165.

such gifts, notwithstanding the act takes effect before the will is probated.<sup>41</sup>

**§ 42. Curative Act.**—Where an inheritance tax law is ineffectual at the time of the death of a testator, because in certain particulars unconstitutional, the legislature may, before the distribution of the estate, cure the defects in the original statute by an amendatory act, and subject to taxation the property still under the control of the probate court.<sup>42</sup>

**§ 43. Repeal and Re-enactment of Statute.**—Repeals of inheritance tax laws by implication, like repeals of other revenue acts, are not favored.<sup>43</sup> And where there is an express repeal of a statute, and at

<sup>41</sup> *Provident Hospital & Training School Assn. v. People*, 198 Ill. 495, 64 N. E. 1031; *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350; *Sherrell v. Christ Church*, 121 N. Y. 701, 25 N. E. 50.

<sup>42</sup> *Montgomery v. Gilbertson*, 134 Iowa, 291, 10 L. R. A., N. S., 986, 111 N. W. 964.

<sup>43</sup> *Zickler v. Union Bank & Trust Co.*, 104 Tenn. 277, 57 S. W. 341.

The effect of the repeal of certain provisions of the New York statutes will be found considered in *Matter of Prime*, 136 N. Y. 347, 18 L. R. A. 713, 32 N. E. 1091, affirming 64 Hun, 50, 18 N. Y. Supp. 603; *Estate of Jones*, 54 Misc. Rep. 202, 105 N. Y. Supp. 932; *Matter of Arnett*, 49 Hun, 599, 2 N. Y. Supp. 428; *Estate of Moore*, 90 Hun, 162, 35 N. Y. Supp. 782; and the repeal of the Virginia statute in *Eyre v. Jacob*, 14 Gratt. (Va.) 422, 73 Am. Dec. 367; *Fox's Admrs. v. Commonwealth*, 16 Gratt. (Va.) 1. The Ohio statute repealing the inheritance tax and excepting from the repeal estates wherein the inventory had been filed at the date of the passage of the act, was not affected by section 79 of the Revised Statutes of 1906, providing that a repeal shall not affect pending actions or proceedings, and the right to collect such tax was terminated when the act took effect: *Friend v. Levy*, 76 Ohio St. 26, 80 N. E. 1036. Where no succession tax provided for by the act of Congress, June 13, 1898, was due or a lien on property when the act was repealed, the tax to which the estate would otherwise have been subject was not "imposed" at the date of the repeal within the saving clause of the repealing act, providing that taxes previously imposed should not be affected by the repeal: *Tilghman v. Eidman*, 131 Fed. 651. Section 20 of the collateral inheritance tax law of California, giving the county treasurer a commission on all sums collected thereunder in addition to his salary,

the same time a re-enactment of a portion of its provisions, the re-enactment neutralizes the repeal, in so far as the old law is continued in force, and the part of the old law re-enacted operates without interruption." The right of the state to a tax becomes vested immediately on the death of the decedent, and thereafter it is not, at least unless such is the clearly expressed intent of the legislature, divested or affected by the repeal of the statute;<sup>45</sup> and the estate cannot be distributed to the heirs without the tax being paid.<sup>46</sup>

**§ 44. Repeal of United States Statute.**—The inheritance tax imposed by Congress in 1898, although not "due and payable" under section 30 thereof, as amended in 1901, until one year after the death of the testator, must be deemed to have become an obligation immediately upon the passing by death of a vested right to the present possession or enjoyment of a legacy or distributive share, so as to be within the saving clause of the repealing act of 1902, preserving all taxes "imposed" prior to the taking effect of that act, although the testator's death was less than one year prior to such date, in view of the statute of 1901, providing that the repeal of any statute shall not have the effect to release or extinguish any pen-

though not entirely repealed, has been so modified by the county government acts of 1893 and 1897 that the commissions cannot be received by him individually to his own use, but must be paid into the county treasury: *San Diego County v. Schwartz*, 145 Cal. 49, 78 Pac. 231.

<sup>45</sup> *Estate of Martin*, 153 Cal. 225, 94 Pac. 1053.

<sup>46</sup> *Trippett v. State*, 149 Cal. 521, 8 L. R. A., N. S., 1210, 86 Pac. 1084; *Estate of Martin*, 153 Cal. 225, 94 Pac. 1053; *Arnaud's Heirs v. His Executor*, 3 La. 336; *Succession of Pritchard*, 118 La. 883, 43 South. 537.

<sup>46</sup> *Estate of Lander*, 6 Cal. App. 744, 93 Pac. 202.

alty, forfeiture, or liability incurred thereunder, unless the repealing act shall expressly so provide.<sup>47</sup>

<sup>47</sup> *Hertz v. Woodman*, 218 U. S. 205, 54 L. Ed. 1001, 30 Sup. Ct. Rep. 621. Other federal cases bearing on this question are *Eidman v. Pilghman*, 203 U. S. 580, 51 L. Ed. 326, 27 Sup. Ct. Rep. 779, affirming 136 Fed. 141, 69 C. C. A. 139; *McCoach v. Philadelphia Trust etc. Co.*, 205 U. S. 539, 27 Sup. Ct. Rep. 793, 51 L. Ed. 921, affirming 142 Fed. 120, 73 C. C. A. 610; *United States v. Marion Trust Co.*, 205 U. S. 539, 51 L. Ed. 1191, 27 Sup. Ct. Rep. 794, affirming 143 Fed. 301, 74 C. C. A. 439; *McCoach v. Bamberger*, 161 Fed. 90, 88 C. C. A. 254; *Title Guaranty & Trust Co. v. Ward*, 184 Fed. 447, affirming 164 Fed. 459.

## CHAPTER IV.

## PROPERTY AND SUCCESSIONS SUBJECT TO TAX.

- § 50. Property Liable to Tax, in General.
- § 51. Transfers Subject to Tax, in General.
- § 52. Increase or Decrease of Estate After Death.
- § 53. Real or Personal Property.
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- § 69. The Goodwill of Business.
- § 70. Interest in Partnership Property.
- § 71. Bequest in Discharge of Debt or Obligation.
- § 72. Advancements.

§ 50. **Property Liable to Tax, in General.**—Save for the exemptions, which will be considered in a subsequent chapter,<sup>1</sup> inheritance tax statutes are usually comprehensive in their scope and made to include all property within the jurisdiction of the taxing power.<sup>2</sup>

<sup>1</sup> See the chapter on "Exemptions from Taxation," post, secs. 145-158.

<sup>2</sup> *Morrow v. Durant*, 140 Iowa, 437, 17 Ann. Cas. 850, 23 L. R. A., N. S., 474, 118 N. W. 781; *Hooper v. Shaw*, 176 Mass. 190, 57 N. E. 361; *Howe v. Howe*, 179 Mass. 546, 55 L. R. A. 626, 61 N. E. 225; *Hinds v. Wilcox*, 22 Mont. 4, 55 Pac. 355; *Neilson v. Russell*, 76 N. J. L. 27, 69 Atl. 476; *Estate of Eaton*, 55 Misc. Rep. 472, 106 N. Y. Supp. 682; *Matter of Edson*, 38 App. Div. 19, 56 N. Y. Supp. 409; *Plummer v. Coler*, 178 U. S. 115, 44 L. Ed. 998, 20 Sup. Ct. Rep. 829.

"The statute refers to all property transferred by will, not the kind, nor what it is for; but the passing of the title by the will": *Estate of Eaton*, 55 Misc. Rep. 472, 106 N. Y. Supp. 682.

Thus the collateral inheritance tax of Pennsylvania applies to "all estates, real, personal and mixed, of every kind whatsoever."<sup>3</sup> And the Massachusetts statute includes "all property within the jurisdiction of the commonwealth, corporeal and incorporeal, and any interest therein, whether belonging to the inhabitants of the commonwealth or not." This language indicates an intention on the part of the legislature to tax all property that it has the power to tax; the statute is as broad as the jurisdiction of the state.<sup>4</sup> The California statute declares "a tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom, in trust or otherwise, to persons, institutions, or corporations, not hereinafter exempted."<sup>5</sup> Of the Maryland statute it has been said that "ample provision is made for every possible contingency that may arise, whether the decedent is a resident of this state or not, provided the property is located here, if he is a nonresident, or is actually or constructively here if he is a resident. No estate can escape administration if the law is enforced, and when the property passes into the hands of the executor his obligation to pay the tax is fixed, and his bond at once becomes liable therefor."<sup>6a</sup>

Under such statutes the inheritance tax is measured by the property within the power of the state to tax, and not by the property which the state policy has selected for purposes of general taxation.<sup>6</sup> Property not taxable as such may constitutionally be considered in fixing the amount of an inheritance tax; the fact

<sup>3</sup> Estate of Lea, 194 Pa. 524, 45 Atl. 337.

<sup>4</sup> Kinney v. Stevens, 207 Mass. 368, Ann. Cas. 1912A, 902, 35 L. R. A., N. S., 784, 93 N. E. 586. See, too, Greves v. Shaw, 173 Mass. 205, 53 N. E. 272.

<sup>5</sup> Cal. Stats. 1911, p. 713.

<sup>6a</sup> Fisher v. State, 106 Md. 104, 66 Atl. 661.

<sup>6</sup> Estate of Stanton, 142 Mich. 491, 105 N. W. 1122.



that property is exempt from general taxation does not prevent the imposition of an inheritance tax on the transfer thereof, for such tax is on the succession, not on the property.'

"The continuous tendency of the courts," to quote from Justice Hatch, "has been to embrace within the transfer tax act, directly or indirectly, all property of every species found herein on the death of the decedent."<sup>1</sup> Referring to the New York statute, Justice Glass, in an opinion delivered in 1901, makes this observation: "The present laws relating to taxable transfers are a compilation and revision of fifteen years of legislation upon the subject, beginning with the collateral inheritance tax act of 1885. Its development has been, to a great extent, in the form of amendments seeking to enlarge the field of taxation, and to break down the barriers which separated the exempt from the nonexempt. Judicial decisions tending to limit the scope of the law have been closely followed by new legislation abolishing the exemptions declared by the courts to exist. The constant effort seems to have been to bring more persons and more property within the operation of the law."<sup>2</sup>

One cannot contemplate the course of events in New York without being impressed with the truth of these observations. And while that state has been more progressive than some others in extending the wholesome principle of inheritance taxation, yet the states generally show a commendable tendency in that direction. New York, though perhaps more conspicuous, does not stand alone in this respect.

<sup>1</sup> *Kingsbury v. Chapin*, 196 Mass. 533, 13 Ann. Cas. 738, 82 N. E. 700; *Estate of Knoedler*, 140 N. Y. 377, 35 N. E. 601; *Orr v. Gilman*, 183 U. S. 278, 46 L. Ed. 196, 22 Sup. Ct. Rep. 213.

<sup>2</sup> *Estate of Daly*, 100 App. Div. 373, 91 N. Y. Supp. 858.

<sup>3</sup> *Estate of Crouse*, 34 Misc. Rep. 670, 70 N. Y. Supp. 731.

§ 51. **Transfers Subject to Tax, in General.**—Inheritance tax statutes are also comprehensive in embracing all transfers occasioned by or referred to the death of the transferrer. Not only are those transfers by will or by the intestate laws included, but also those made in contemplation of the death of the donor or grantor, or intended to take effect in enjoyment after his death. And transfers in contemplation of death are not restricted to gifts technically *causa mortis*; nor are transfers by will confined to such testamentary gifts as are merely gratuitous, but embrace all gifts by will, whatever the motive may be, whether to pay a debt, discharge some obligation, legal or moral, or to benefit a relative or person for whom the testator entertained an affection.<sup>10</sup>

If a will gives the testator's estate to his widow, on condition that she pay certain legacies to his collateral

<sup>10</sup> *Matter of Gould*, 156 N. Y. 423, 51 N. E. 297; *Estate of Stebbins*, 52 Misc. Rep. 438, 103 N. Y. Supp. 563; *Estate of Price*, 62 Misc. Rep. 149, 116 N. Y. Supp. 283.

Where a man devised property to his mother, and she predeceased him, leaving as heirs a brother and sister of the testator, it was decided that the devised property passed directly from the testator to his brother and sister, and hence was subject to the collateral inheritance tax: *Estate of Hulett*, 121 Iowa, 423, 96 N. W. 952.

A trustee who, at the time of the war revenue act of 1898, held personally under a testamentary trust, the property to be distributed among the survivors at a future date of a class of legatees designated by the testator, is not a "person possessed" of the property, so that it will be taxable when it passes from him to the distributees: *McLain v. Pennsylvania Co.*, 108 Fed. 618, 47 C. C. A. 529.

Where personal property is held in joint tenancy, the share of one tenant which passes to the others on his death is subject to the inheritance tax: *United States v. Robertson*, 183 Fed. 711.

A devise of property by a wife to her husband has been held subject to the succession tax, notwithstanding it was bought and paid for by him, and deeded to her, on the understanding that she should will it to him: *Ransom v. United States*, Fed. Cas. No. 11,574.

A statute that imposes a tax on "property of any decedent which passes to any person other than" specified relatives, embraces property willed to a corporation: *Miller v. Commonwealth*, 27 Gratt. (Va.) 110.

relatives, the legacies are subject to the collateral inheritance tax, as directly bestowed by the will.<sup>11</sup> And where property is devised absolutely to the executor, the fact that extrinsic evidence shows that it is impressed with a trust in favor of a brother of the testator does not relieve it from liability for the transfer tax.<sup>12</sup> But where a man thirty years before his death agreed, for a valuable consideration, with the mother of his child that his property remaining at his death shall go to the child, and nine years before his death a judgment for specific performance of the contract is awarded the child, the transfer is not by will nor by the intestate laws nor in contemplation of death, so as to be subject to the transfer tax.<sup>13</sup>

#### § 52. Increase or Decrease of Estate After Death.

The right of the state to an inheritance tax accrues at the moment of death, and hence is ordinarily measured as to any beneficiary by the value at that time of such property as passes to him. Subsequent appreciation or depreciation is immaterial.<sup>14</sup> Unless the statute otherwise provides, the tax does not fasten on the increase or income of the estate, accruing after the death of the decedent and during administration.<sup>15</sup>

Some of the statutes, in defining what property shall be subject to the tax, use the terms, property of which

<sup>11</sup> Appeal of Lauman, 131 Pa. 346, 18 Atl. 900.

<sup>12</sup> Matter of Edson, 38 App. Div. 19, 56 N. Y. Supp. 409, affirmed, 159 N. Y. 568, 54 N. E. 1092.

<sup>13</sup> Estate of Demers, 41 Misc. Rep. 470, 84 N. Y. Supp. 1109.

<sup>14</sup> Estate of Hite, 159 Cal. 392, 113 Pac. 1072; Estate of Van Pelt, 63 Misc. Rep. 616, 118 N. Y. Supp. 655; Estate of Vivanti, 138 App. Div. 281, 122 N. Y. Supp. 954. The value of the estate is not to be diminished, for purposes of the tax, by the expense of litigation among the distributees (Estate of Sanford, 66 Misc. Rep. 395, 123 N. Y. Supp. 284), nor by losses due to misappropriation by the executor: Estate of Hite, 159 Cal. 392, 113 Pac. 1072.

<sup>15</sup> Estate of Williamson, 153 Pa. 508, 26 Atl. 246; Estate of Miller, 5 Pa. Co. Ct. 522.

a person dies "seised or possessed," and under such statutes it is held that the increase or interest that accrues pending administration is not subject to the inheritance tax.<sup>16</sup> Other statutes, in defining the property subject to taxation, do not use the expression "seised or possessed," but under them it has nevertheless been held that the income accruing after death is not subject to the tax. In so holding, the supreme court of Massachusetts said: "A decision could be made either way without contradicting the express words of the act, or, possibly, even any very clear implication. But such indications as there are seem to us to converge toward the conclusion that the valuation is to be as of the day of the death. The language of the first section, 'All property . . . which shall pass by will . . . or by deed, grant, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor, . . . shall be subject to a tax of five per centum of its value,' naturally would be construed to mean value at the time when the property passes. Such has been the construction adopted elsewhere, although under acts no doubt more explicit than ours."<sup>17</sup> So a fortiori upon the view of the nature of the tax expressed in *United States v. Perkins*.<sup>18</sup> The time when the property passes under a deed is not later than the death of the grantor. The same is true in the case of a will. It is true that in the latter instance the interest of a legatee is subject to an account, but still it is an interest in the fund as it is, analogous to that of a cestui que

<sup>16</sup> *Matter of Vassar*, 127 N. Y. 1, 27 N. E. 394, reversing 58 Hun, 378, 12 N. Y. Supp. 203.

<sup>17</sup> *Attorney General v. Sefton*, 11 H. L. Cas. 257, 269, 271, 275, 276, 11 Eng. Reprint, 1331-1333; *Estate of Westurn*, 152 N. Y. 93, 102, 46 N. E. 315.

<sup>18</sup> *United States v. Perkins*, 163 U. S. 625, 41 L. Ed. 287, 16 Sup. Ct. Rep. 1073.

trust, and vests at the death of the testator.<sup>19</sup> On this ground it is that other courts have held that income accruing after the testator's death is not liable to the tax.<sup>20</sup> As stated by the counsel for the legatees, it is not a part of the property which passes by the will."<sup>21</sup>

Some statutes, the Montana, for example, expressly provide that the inheritance tax "shall be levied and collected upon the increase of all property arising between the date of death and the date of the decree of distribution"; and under such a provision the words "increase of all property" includes multiplication in kind as well as augmentation in value.<sup>22</sup> Under a statute of this kind, where there has been delay in payment and there is uncertainty as to the value of the property and hence as to the amount of the tax, due to appreciation or the character of the interest passing to the beneficiaries, such as future contingent interests or incomes from them, the court may proceed to ascertain the increase in the value which accrued between the date of the death of the testator and the date of the decree of distribution.<sup>23</sup>

**§ 53. Real or Personal Property.**—Under the provisions of some statutes it often becomes necessary, in order to determine whether property is subject to the inheritance tax, to ascertain whether it is personal property or real estate, distinctions being made between these two classes of property in the matter of taxation. Of course the legislature is competent to classify various kinds of property for purposes of inheritance taxation, restricting the tax, for instance, to personal property alone; and the courts have no au-

<sup>19</sup> Chapin Nat. Bank v. Waite, 150 Mass. 234, 22 N. E. 915.

<sup>20</sup> Estate of Williamson, 153 Pa. 508, 26 Atl. 246.

<sup>21</sup> Hooper v. Brafford, 178 Mass. 95, 59 N. E. 678.

<sup>22</sup> Estate of Tuohy, 35 Mont. 431, 90 Pac. 170.

<sup>23</sup> State v. District Court, 41 Mont. 357, 109 Pac. 438.

thority, when the legislature has omitted real estate, to supply the omission.<sup>24</sup>

In New York a minor's share of the proceeds of a partition sale of land has been held taxable under a statute exempting property passing to certain relatives, unless it is personal property of the value of ten thousand dollars or more.<sup>25</sup> A leasehold interest has also been regarded as personal property;<sup>26</sup> but a perpetual lease, reserving rent, is real property, within the meaning of the transfer tax act.<sup>27</sup> Land contracts owned by a vendor at the time of his death have been considered personal property, for purposes of inheritance taxation;<sup>28</sup> so has the interest of shareholder in the realty of a joint stock association.<sup>29</sup>

Where a testator directs his executors, as soon as practicable after his death, to pay off, out of his personal property, encumbrances on his real estate, this has been said not to relieve the personal property, to the extent of the amount necessary to discharge the encumbrances, from the operation of the transfer tax law. The transfer tax should be imposed upon property in the form in which it stands at the time of the owner's death.<sup>30</sup>

**§ 54. Property Affected by Equitable Conversion.**  
It has been attempted, with varying degrees of success, to invoke the rule of equitable conversion so that real

<sup>24</sup> *Hinds v. Wilcox*, 22 Mont. 4, 55 Pac. 355; *Estate of Morris*, 138 N. C. 259, 50 S. E. 682. But see *Drew v. Tift*, 79 Minn. 175, 79 Am. St. Rep. 446, 47 L. R. A. 525, 81 N. W. 839.

<sup>25</sup> *Matter of Stiger*, 7 Misc. Rep. 268, 28 N. Y. Supp. 163.

<sup>26</sup> *Estate of Althouse*, 63 App. Div. 252, 71 N. Y. Supp. 445, affirmed, 168 N. Y. 670, 61 N. E. 1127.

<sup>27</sup> *Estate of Vivanti*, 138 App. Div. 281, 122 N. Y. Supp. 954.

<sup>28</sup> *Estate of Stanton*, 142 Mich. 491, 105 N. W. 1122.

<sup>29</sup> *Estate of Jones*, 172 N. Y. 575, 60 L. R. A. 476, 65 N. E. 570.

<sup>30</sup> *Estate of De Graaf*, 24 Misc. Rep. 147, 53 N. Y. Supp. 591; *Estate of Offerman*, 25 App. Div. 94, 48 N. Y. Supp. 993.

estate of a testator, otherwise not subject to inheritance taxation, might be considered personal property and thereby brought within the operation of the taxing statute. In at least two New York decisions it has been affirmed that where a testator directs a sale or conversion of his real estate for distribution, it becomes taxable as personal property.<sup>31</sup> The court of appeals of that state, however, has generally resisted the application of the doctrine of equitable conversion in this connection, declaring that "the question of taxation is one of fact, and cannot turn on theories or fiction," and that "it was never intended by the law to tax a theory having no real existence behind it."<sup>32</sup>

In the leading New York<sup>33</sup> case it was sought to apply the rule of equitable conversion to real estate situate without the state of New York, which, unless it could be regarded as personalty, could not be subjected to the inheritance tax. But the court refused to regard the property as converted into personalty; and its view of the law on this question has been adopted by the Illinois and Massachusetts courts.<sup>34</sup> In coming to this conclusion, the New York court dwells upon the well-established rules that the succession to real property is by permission of the state in which it lies, and that the power of a state to impose a tax affecting real property is restricted to such thereof as it has jurisdiction over. And the court

<sup>31</sup> *Estate of Mills*, 86 App. Div. 555, 67 N. Y. Supp. 956, affirmed, 87 App. Div. 632, 84 N. Y. Supp. 1135, 177 N. Y. 562, 69 N. E. 1127; *Estate of Wheeler*, 1 Misc. Rep. 450, 22 N. Y. Supp. 1075.

<sup>32</sup> *Estate of Swift*, 137 N. Y. 77, 18 L. R. A. 709, 32 N. E. 1096; *Estate of Curtis*, 142 N. Y. 219, 36 N. E. 887; *Estate of Sutton*, 3 App. Div. 208, 38 N. Y. Supp. 277, affirmed in 149 N. Y. 618, 44 N. E. 1128; *Estate of Baker*, 67 Misc. Rep. 360, 124 N. Y. Supp. 827.

<sup>33</sup> *Estate of Swift*, 137 N. Y. 77, 18 L. R. A. 709, 32 N. E. 1096.

<sup>34</sup> *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350; *McCurdy v. McCurdy*, 197 Mass. 248, 14 Ann. Cas. 859, 16 L. R. A., N. S., 329, 83 N. E. 881.

declines to recognize any fiction that will transmute the situs of such property to the domicile of the owner. "The question of the jurisdiction of the state is one of fact, and cannot turn upon theories or fictions; which, as it has been observed, have no place in a well-adjusted system of taxation." The Illinois court, in following the doctrine thus announced, observes that "the doctrine of equitable conversion is an outgrowth of the maxim of equity, that in a court of equity, that which ought to have been done is to be regarded as done. The doctrine is recognized in equity only, and is not given effect in courts of law. It cannot be applied in proceedings for the collection of inheritance or succession taxes."<sup>35</sup> And the Massachusetts court, in adopting the ruling of the New York court, says, "the law of equitable conversion ought not to be invoked merely to subject property to taxation, especially when the question is one of jurisdiction between different states."<sup>36</sup> But it has been thought equally objectionable to apply the rule of equitable conversion for the purpose of subjecting domestic real estate to inheritance taxation which would otherwise be exempt.<sup>37</sup>

**§ 55. Equitable Conversion—Pennsylvania Doctrine.**—But in Pennsylvania the doctrine of equitable conversion has been more favorably received. The courts of that state recognize, however, that since inheritance taxes attach at the instant of death, a conversion must be referable to that moment in order to be effectual to change the character of the property from real to personal estate for purposes of inher-

<sup>35</sup> *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350.

<sup>36</sup> *McCurdy v. McCurdy*, 197 Mass. 248, 14 Ann. Cas. 859, 16 L. R. A., N. S., 329, 83 N. E. 881.

<sup>37</sup> *Estate of Sutton*, 3 App. Div. 208, 38 N. Y. Supp. 277, affirmed, 149 N. Y. 618, 44 N. E. 1128.



ance taxation; but when a direction in a will to sell is imperative, the Pennsylvania courts date the conversion from the time of death by applying the rule that what is to be done must be treated in equity as done already. This doctrine has been declared the law in several cases, even as to land situate outside of the state.<sup>28</sup> It logically follows, and has been so held, that where land in Pennsylvania is owned by a nonresident testator, whose will works an equitable conversion, the land becomes personal property, follows the owner's domicile, and is therefore not taxable in Pennsylvania.<sup>29</sup>

But where a conversion is to take place only in the discretion of the executors, or where it is postponed to some future date by the express direction of the testator, there seems to be no doubt that land must in the meantime retain its character as realty and cannot be subjected to inheritance taxation as personal property. This rule has been applied in cases of land situ-

<sup>28</sup> *Miller v. Commonwealth*, 111 Pa. 321, 2 Atl. 492; *Estate of Williamson*, 153 Pa. 508, 26 Atl. 246; *Estate of Handley*, 181 Pa. 339, 37 Atl. 587; *Estate of Dalrymple*, 215 Pa. 367, 64 Atl. 554. "There is no merit," it is said in the Dalrymple case, "in the contention that the will did not work a conversion of the testator's real estate in Pennsylvania and North Dakota. The third paragraph of the will provides: 'Inasmuch as I have certain real and personal property belonging to me situated and being in the states of Pennsylvania and North Dakota, I do hereby expressly direct my said executors and trustees or their successors in the trust to sell the same, except the home farm hereinbefore devised to F., at such prices and upon such terms as they may deem best, and to keep, hold, invest, use and apply the money or other proceeds from the sale of the same for the uses and purposes mentioned herein.' This, it will be observed, is an express direction to sell the real estate in Pennsylvania and North Dakota, and works a clear and immediate conversion into personalty. It is therefore subject to the payment of a collateral inheritance tax."

<sup>29</sup> *Estate of Coleman*, 159 Pa. 231, 28 Atl. 137; *Estate of Shoenberger*, 221 Pa. 112, 128 Am. St. Rep. 737, 19 L. R. A., N. S., 290, 70 Atl. 579; *Estate of Lamberton*, 40 Pa. Super. Ct. 548.

ate beyond the territorial boundaries of the state.<sup>40</sup> Yet where a will gave the executors full power and discretion to sell any or all real estate whenever necessary or expedient, and it became necessary in the course of administration to make such sale to pay pecuniary legacies, it was held that the value of the

<sup>40</sup> Estate of Hale, 161 Pa. 181, 28 Atl. 1071; Estate of Handley, 181 Pa. 339, 37 Atl. 587. In this last case the court, referring to the previous Pennsylvania decision applying the doctrine of equitable conversion without regard to the actual situs of the land, said: "These cases rest on the basis that the testator intended and directed not merely a nominal or limited conversion but an actual conversion by sale, and the blending of the proceeds with his other personalty for purposes of administration under his will. The action of the court in dating such conversion from the instant of death was but the application of the general rule that what is to be done must be treated in equity as done already. Though this argument is severely technical, and therefore questionable in regard to jurisdiction to tax land in fact situated in another state, yet it has the merit of being unanswerably logical if the premise be once accepted. This court has followed the argument unswervingly to its logical conclusion, even when the result seemed contrary to the express legislative policy of the state. Thus in Coleman's Estate, 159 Pa. 231, 28 Atl. 137, where land in Pennsylvania was owned by a testator in New York whose will made an equitable conversion, the logical corollary of *Miller v. Commonwealth*, 111 Pa. 321, 2 Atl. 492, was accepted and the land was held to have become personalty and to follow the owner's domicile, and therefore not to be taxable here. All our cases agree that the status of the property at the instant of death must govern the question of tax, both as to liability and amount. Where, therefore, the conversion is not imperative, but only permissive, and rests in the discretion of the executors or others, it does not become operative until the exercise of the discretion, and in the meantime the land retains its normal character. For the same reasons, where the conversion, though imperative, is not in praesenti but in futuro, it goes into effect only from the happening of the stipulated contingency. This brings us to the exact question now before us, and we find it expressly decided in *Hale's Estate*, 161 Pa. 181, 28 Atl. 1071. The testator left land in Missouri to his wife for her life, and upon her death directed his executors to sell them and invest the proceeds in mortgages in St. Louis and pay the income therefrom to collaterals. It was held by the orphans' court of Philadelphia that the proceeds were not taxable and the decision was affirmed. The auditing judge put his conclusion directly on the postponement of the conversion, and though the court in bank referred to the additional circumstance that the proceeds were to be invested in mortgages in St. Louis, yet it is clear that that was not a material point in the ratio decidendi. Mort-

land in other states was subject to the payment of the Pennsylvania collateral inheritance tax.<sup>41</sup>

§ 56. **Estate of Surviving Wife—Dower.**—Widely divergent views have been entertained as to whether the estate which the law bestows upon a surviving wife is subject to the inheritance tax. Some courts, apparently supposing that this estate comes to her by virtue of the law of succession, have regarded it as liable to the tax. This has been the attitude of the Illinois judiciary, and, as will presently be seen, the California as well. In Illinois the right of a widow is held subject to the inheritance tax, whether she accepts a devise for her benefit or elects to take dower in place thereof. "Neither dower nor any provision made in lieu of dower is exempt."<sup>42</sup>

It is true that dower has its origin and continuance by force of the law, and depends upon the husband's death for its consummation, but it is quite another

gages, no matter what the situs of the land pledged, are personal property, and if the conversion had been immediate, no direction as to the investment of the proceeds could have exempted them from the tax. The ground of the decision, which is the logical result of the principles adopted in all the preceding cases, is that the tax is assessable at the instant of death, and where the conversion is not referable to that same instant, as where it is to take place only in the discretion of the executors, or a fortiori where it is postponed by the express direction of the testator, the land in the meantime retains its real character, and being outside the state is not subject to taxation."

<sup>41</sup> Estate of Vanuxem, 212 Pa. 315, 1 L. R. A., N. S., 400, 61 Atl. 876.

<sup>42</sup> Billings v. People, 189 Ill. 472, 59 L. R. A. 807, 59 N. E. 798, affirmed (1903), 188 U. S. 97, 47 L. Ed. 400, 23 Sup. Ct. Rep. 272; People v. Field's Estate, 248 Ill. 147, 33 L. R. A., N. S., 230, 93 N. E. 721. In this last case, a provision for the wife in an antenuptial contract with her husband was held in lieu of and a substitute for her dower and other rights which she would have had in his estate, and was held subject to the inheritance tax. Compare Estate of Baker, 38 Misc. Rep. 151, 77 N. Y. Supp. 170, in note on page 81.

In People v. Nelms, 241 Ill. 571, 89 N. E. 683, it is held that the value of the dower estate should be deducted from the beneficial remainder interest of a devisee in fixing his inheritance tax.

thing to suppose that the estate is dependent upon the law of succession, or owes its existence to any such transfer as the inheritance tax statutes contemplate. Dower comes to a wife by virtue of the marriage, and the death of the husband serves only to consummate, not to transmit it. The law that confers dower on a widow is not the law that appoints the inheritable property of a decedent to designated heirs. The New York courts seem to have come to this conclusion, and have affirmed that dower is neither transferred by will nor by the intestate laws, within the meaning of inheritance tax laws, and therefore is not subject to the transfer tax; but where the provisions in a will in favor of the widow are in lieu of dower, and she elects to accept them, the gift is taxable, since it is a transfer by will, and the estate is not diminished for purposes of taxation by the value of her dower right.<sup>43</sup> If she fails to comply with the statutory provisions relative to election, she will, for purposes of the tax, be presumed to have decided to take under the will, unless she is entitled to her

<sup>43</sup> Estate of Riemann, 42 Misc. Rep. 648, 87 N. Y. Supp. 731; Estate of Barbey, 114 N. Y. 725; Estate of Weiler, 122 N. Y. Supp. 608; Estate of Shields, 68 Misc. Rep. 264, 124 N. Y. Supp. 1003. The widow's estate in dower becomes vested on her marriage and consummate upon the death of the husband, independent of his will: Estate of Weiler, 122 N. Y. Supp. 608.

In Estate of Baker, 38 Misc. Rep. 151, 77 N. Y. Supp. 170, it is decided that where an antenuptial contract provided that the husband should, in lieu of dower and her rights in his estate, give the wife a certain sum if she should survive him, such sum is not, upon his death, subject to the inheritance tax.

That the transfer tax cannot be avoided by a legacy to the widow in consideration of her releasing dower, see Estate of De Graaf, 24 Misc. Rep. 147, 53 N. Y. Supp. 591; and that the Illinois statute of 1895, exempting a life estate given by the testator to his widow, does not apply when she renounces the provisions of the will and elects to take other interests in the property, see *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350.

dower in addition to the testamentary provision made for her.<sup>46</sup>

The doctrine of the New York courts, that the widow's dower is not subject to the inheritance tax, prevails in Pennsylvania<sup>47</sup> and Tennessee.<sup>48</sup> To quote from the supreme court of the last state: "Whether it be considered that the widow holds her dower in the nature of a purchaser from her husband by virtue of the marriage contract, or whether it be merely a provision of the law made for her benefit, it cannot be considered that her right is in succession to that of her husband upon his death, or that the husband bestows it upon her in contemplation of death. While it is true that her right to dower is not consummated until the death of her husband, and that it is carved out of only such realty as he owned at his death, it does not follow from this premise that the widow succeeds to his title by the intestate laws. She derives it by virtue of the marriage, and in her right as wife to be consummated in severalty to her upon the death of her husband."

In Nebraska the widow of a testator, who takes real estate devised to her by his will in lieu of dower, is not in a position to require the taxing authorities to exempt so much of such real estate as equals the value of her dower interest from the payment of the inheritance tax.<sup>49</sup> A gift in lieu of dower of a specified

<sup>46</sup> Estate of Stuyvesant, 72 Misc. Rep. 295, 131 N. Y. Supp. 197.

<sup>47</sup> Estate of Avery, 34 Pa. 204; Estate of Small, 11 Pa. Co. Ct. 1.

<sup>48</sup> Crenshaw v. Moore (Tenn.), 137 S. W. 924. In Memphis Trust Co. v. Speed, 114 Tenn. 677, 88 S. W. 321, it was decided, under a statute imposing a collateral inheritance tax, except on the property passing to the widow, that where a nonresident decedent left personalty in Tennessee, which was a portion of the residue of his estate, one-half of which he willed to his widow, and she elected to take one-half thereof in kind, such half was not subject to the tax; citing Matter of James, 144 N. Y. 6, 38 N. E. 961.

<sup>49</sup> Estate of Sanford (Neb.), 133 N. W. 870.

amount annually, payable in equal quarterly installments, is held not an annuity in Ohio.<sup>48</sup>

**§ 57. Estate of Surviving Wife—Community Property.**—That the independence of dower from the law of succession and testamentary disposition, and its consequent exemption from inheritance taxation, have not readily been discerned, is not surprising, in view of the peculiar features of dower and the obscurity of the law on which it rests. The surprise comes when, in a jurisdiction where the community system has been adopted, the exemption of the share of a wife in the common property on the death of her husband should be doubted. Yet that doubt has arisen, and, in California, has been resolved adversely to the wife. Some years ago the supreme court of the state made the startling announcement that the interest of a wife in the community property during the lifetime of her husband is only an expectancy, and that on his death she takes it as his heir.<sup>49</sup> This notion all but ignores the community property rights of the wife, and reduces the community system to a mere name without substance. It is a misconception of the law, and has been so recognized by other courts,<sup>50</sup> but it is still adhered to in California, with the result that the share of a wife in the community property is, on her husband's death, subject to the inheritance tax.<sup>51</sup> Regarding the question as one of local taxation, the su-

<sup>48</sup> *Chisholm v. Shields*, 67 Ohio St. 374, 66 N. E. 93.

<sup>49</sup> *Matter of Burdick*, 112 Cal. 387, 44 Pac. 734; *Spreckels v. Spreckels*, 116 Cal. 339, 58 Am. St. Rep. 170, 36 L. R. A. 497, 48 Pac. 228; *Sharp v. Loupe*, 120 Cal. 89, 52 Pac. 134, 586.

<sup>50</sup> *Warburton v. White*, 176 U. S. 485, 44 L. Ed. 555, 20 Sup. Ct. Rep. 404; *Arnett v. Reade*, 220 U. S. 311, 55 L. Ed. 477, 31 Sup. Ct. Rep. 425.

<sup>51</sup> *Estate of Moffitt*, 153 Cal. 359, 20 L. R. A., N. S., 207, 95 Pac. 653, 1025.

preme court of the United States has declined to review the decision of the California court.<sup>52</sup>

Very recently the supreme court of Idaho has had this question before it for determination, and has found, contrary to the California court, that a wife is not liable, upon the death of her husband, to pay an inheritance tax on her half of the community property, for the reason that it does not pass to her "by will or by the intestate laws."<sup>52a</sup> There can be no doubt that the Idaho court has reached the right conclusion. The legislature, in adopting the community system, intended to provide a real marital community in property and accord to the wife a fuller measure of property rights than was hers under the common law. The legislature did not suppose it was providing her a mere expectancy during the husband's life and an inheritance on his death. That would be far from what is contemplated in the very nature of community property. And certainly, in adopting the inheritance system of taxation, the legislature did not have in mind the exaction of tribute from the community interest of a wife upon the death of her husband. In his lifetime such interest is her own property, practically in the fullest sense, except that the law constitutes him the agent for its control and management; and the removal of the agent by death in nowise works a transmission of title to be subjected to the succession tax.

Where a citizen of France married in that country without any express antenuptial contract, and subsequently immigrated to New York, acquired real and personal property in that state, and died there intestate, his widow cannot claim one-half of the property as exempt from the New York transfer tax, on

<sup>52</sup> *Moffitt v. Kelly*, 218 U. S. 400, 54 L. Ed. 1086, 31 Sup. Ct. Rep. 79.

<sup>52a</sup> *Kohny v. Dunbar* (Idaho), 121 Pac. 544.

the ground that the laws of France give the wife a community of interest in whatever property her husband acquires. The New York law controls.<sup>52b</sup>

In Louisiana the surviving spouse does not acquire, in usufruct, the estate of the deceased spouse by inheritance, and hence the right of usufruct in such case is not subject to the tax imposed on inheritances.<sup>52c</sup>

**§ 58. Estate of Surviving Husband—Curtesy.**—A surviving husband does not take his estate of curtesy in his wife's real property by virtue of the intestate laws, and therefore such estate is not subject to the transfer tax. Speaking of curtesy, Justice Thomas says: "Its origin and continuance is due to the law, but not the law that appoints the inheritable property of an intestate to prescribed heirs. It is unimportant in the present inquiry upon what theory, adopted at a remote time and now obscured in motive, the law proceeded in making this transfer to the husband. It is only necessary to establish that it was not and is not an intestate law."<sup>53</sup>

It has been adjudged in New York that where a woman, a resident of the state, dies without a will, leaving a husband but no descendants, there is no taxable transfer to him of her personal property, for he does not take by the intestate laws. "Her intestacy was the condition of his taking, but not the source of his estate. . . . He took title upon her death intestate, but not by a transfer thereby created. From the fact that she did not devise it arises the fact that his right to take was not destroyed. She was capable of forestalling and preventing an estate, but could not make such estate. She simply did not preclude the

<sup>52b</sup> *Estate of Majot*, 199 N. Y. 29, 92 N. E. 402.

<sup>52c</sup> *Succession of Marsal*, 118 La. 212, 42 South. 778.

<sup>53</sup> *Estate of Starbuck*, 137 App. Div. 866, 122 N. Y. Supp. 584, affirmed, 201 N. Y. 531, 94 N. E. 1098.



operation of law that matured it upon her death. But when one seeks for any act on her part, it cannot be found. His estate did not spring from her forbearance. He is indebted to such forbearance for obtaining what the law provides for him, but nothing more."<sup>54</sup>

The New York statute relative to the taxation of estates by the curtesy was amended in 1911.<sup>54a</sup>

**§ 59. Articles Exempt to Widow and Children.**—Articles exempt to the widow and minor children of the decedent are not subject to the New York transfer tax, whether or not they have been actually set apart and whether or not the decedent died testate. They do not pass by last will and testament nor by the intestate law.<sup>55</sup> But if he was not possessed at the time of his death of the exempt articles named in the statute, his widow and minor children are not entitled to have the money equivalent of such articles deducted from the value of the estate in fixing the amount of the tax.<sup>56</sup>

**§ 60. Homestead and Family Allowance.**—Where a homestead is set apart absolutely by the probate court to the widow, her title is in no way derived from the will of the husband, nor by virtue of the law of succession. The title is deraigned solely from the order of court. And money paid from the funds of the estate, by order of court, for the maintenance of the widow and children, stands on the same basis. That she would have received the realty set apart as the homestead, and the money paid as the family al-

<sup>54</sup> Estate of Green, 68 Misc. Rep. 1, 124 N. Y. Supp. 863, 154 App. Div. 232, 129 N. Y. Supp. 54.

<sup>54a</sup> Section 24 of New York statute, post.

<sup>55</sup> Estate of Page, 39 Misc. Rep. 220, 79 N. Y. Supp. 382.

<sup>56</sup> Estate of Libolt, 102 App. Div. 29, 92 N. Y. Supp. 175.

lowance, as sole devisee and legatee, if there had been no orders therefor by the probate court, is immaterial. Therefore, as the homestead and family allowance pass by virtue of the orders of the court as a right bestowed by the beneficence of the law, and not by "will" or the "intestate laws," they are not subject to the inheritance tax.<sup>57</sup>

**§ 61. Bequests for Funeral or Burial Expenses.—**In New York a bequest for the maintenance of the decedent's burial lot has been held exempt from inheritance taxation as burial expenses,<sup>58</sup> and a transfer of stock in trust for the erection of a monument to the donor and the care of his grave is held within this rule.<sup>59</sup> But the supreme court of that state has quite recently decided that a bequest to a foreign cemetery association, the interest to be used in keeping the testator's "lot in condition forever," is subject to the transfer tax.<sup>60</sup> Said the court in this case: "In Matter of Vinot,"<sup>61</sup> Surrogate Ransom held that a bequest of one thousand dollars to an association, the income of which was to be applied to the care and preservation of the burial plot of decedent, was not taxable. As this decision has not been overruled by a higher court, it might be considered as a controlling authority in this case. In view, however, of the language of the court of appeals in the Gould case,<sup>62</sup> and of the appellate division in the McAvoy case,<sup>63</sup> it would appear that the decision in Matter of Vinot

<sup>57</sup> Estate of Kennedy, 157 Cal. 517, 29 L. R. A., N. S., 428, 108 Pac. 280.

<sup>58</sup> Matter of Vinot, 7 N. Y. Supp. 517.

<sup>59</sup> Estate of Edgerton, 35 App. Div. 125, 54 N. Y. Supp. 700, affirmed in 158 N. Y. 671, 52 N. E. 1124.

<sup>60</sup> Estate of Fay, 62 Misc. Rep. 154, 116 N. Y. Supp. 423.

<sup>61</sup> Estate of Vinot, 7 N. Y. Supp. 517.

<sup>62</sup> Estate of Gould, 156 N. Y. 423, 51 N. E. 287.

<sup>63</sup> Estate of McAvoy, 112 App. Div. 377, 98 N. Y. Supp. 437.

would scarcely meet with the approval of the appellate courts at the present time. In the Gould case it was held that the property was taxable, although bequeathed for the purpose of satisfying a contractual obligation existing at the time of decedent's death, and in the McAvoy case it was held that the bequest was taxable, although the beneficiary received it in payment of services to be rendered thereafter. While it has been held that a sum spent by an executor in the erection of a monument to decedent is exempt,<sup>64</sup> and that a reasonable sum spent in the purchase of a burial plot for decedent may be regarded as a part of the funeral expenses and, therefore, a proper deduction,<sup>65</sup> there is a manifest distinction between such expenditures made by an executor in his discretion and a bequest made by decedent in his last will to a certain beneficiary and for a certain specific purpose."

In the latest New York decision on this question it is affirmed that the funeral expenses of the decedent are exempt from the transfer tax, and that, as a part of such expenses, may properly be included sums expended for a burial lot and the erection of a suitable monument, and the cost of keeping them in repair.<sup>66</sup>

In a proceeding to collect a collateral inheritance tax under a statute subjecting all property passing by will after the payment of all debts, and providing further that the word "debt" shall include a reasonable sum for funeral expenses, a testator may set aside a sum to erect a tomb for himself, since it cannot be said that that form of burial is unreasonable.<sup>67</sup>

<sup>64</sup> Estate of Edgerton, 35 App. Div. 125, 54 N. Y. Supp. 700, affirmed, 158 N. Y. 671, 52 N. E. 1124.

<sup>65</sup> Estate of Liss, 39 Misc. Rep. 123, 78 N. Y. Supp. 969.

<sup>66</sup> Estate of Maverick, 135 App. Div. 44, 119 N. Y. Supp. 914, affirmed, 198 N. Y. 618, 92 N. E. 1084.

<sup>67</sup> Morrow v. Durant, 140 Iowa, 437, 17 Ann. Cas. 850, 23 L. R. A., N. S., 474, 118 N. W. 781.

§ 62. **Policy of Life Insurance.**—The proceeds of a policy of life insurance payable to the insured, his executors and assigns, is property owned by him at his death, within the meaning of the inheritance tax law, and therefore is subject to taxation. It is immaterial that the policy or its proceeds are not subject to taxation under the general tax law of the state. The inheritance tax statute “proceeds upon a new theory of the right of the government to tax and establishes a new system of taxation. It taxes the right of succession to property, and measures the tax in the method specifically prescribed. All property having an appraisable value must be considered, whether it is such as might be taxed under the general law or not. Many kinds of property might be enumerated which are not assessable under the general law, but which are appraisable under the collateral inheritance act. The definition of the different kinds of property which the legislature has incorporated in the general tax law for the purposes of that law cannot be imported into the collateral inheritance tax law upon any sound principle of statutory construction. It is, therefore, immaterial whether life insurance policies can be valued and assessed for taxation under the general law.”<sup>68</sup>

The question whether the proceeds of a policy on the life of a nonresident are subject to the inheritance taxation is sometimes attended with difficulties. In New York it has been decided that where a policy of life insurance was issued by a domestic company to a nonresident, and the policy was kept out of the state and was there enforceable, the proceeds paid to a foreign executor are not subject to inheritance taxation.<sup>69</sup> It

<sup>68</sup> Estate of Knoedler, 140 N. Y. 377, 35 N. E. 601.

<sup>69</sup> Estate of Gordon, 186 N. Y. 471, 10 L. E. A., N. S., 1089, 79 N. E. 722. To the same effect is *In re Abbott*, 29 Misc. Rep. 567, 61 N. Y. Supp. 1067. The following extract is from the opinion of the above Gordon case: “If the contract in this case is subject to the imposition

has also been held in New York that policies of insurance issued by foreign companies on the life of a nonresident decedent are not taxable, where they were enforceable without seeking the intervention of the courts of this state, though they were in this state at the time of the decedent's death;<sup>10</sup> and that a policy issued by a domestic corporation upon the life of a nonresident is subject to the transfer tax, although kept by the decedent in this state and here collected.<sup>11</sup> This question of the situs of choses in action and other personal property for the purpose of taxation will be considered at length in a subsequent chapter.

Where a testator assigned to his wife, more than a year prior to his death, policies of life insurance payable to him if he survived the endowment period, otherwise to his estate, and before his death, at his request, the assignments were duly indorsed upon the books of the company and indorsements recognizing

of a transfer tax, then any contract of insurance issued to a nonresident, passing to and held by his nonresident representatives or assigns, and being administered and enforceable in a foreign jurisdiction, whether in the state of Texas or California, or in some foreign country, would afford the basis of taxation in this state, provided only the policy was issued by a New York corporation and access could be obtained by the tax collector to its proceeds. No distance of domicile of the assured and his transferees or beneficiaries, and no completeness of foreign jurisdiction over administration and enforcement, and no lack of anticipation of such a result upon the part of the assured, would be a bar to the attempted application of the taxing power. It requires no great imaginative processes to picture the limits and the disapproval and friction to which this theory would lead if logically carried to its full length. It was undoubtedly the intent of the legislature that the statute under consideration should be liberally construed to the end of taxing the transfer of all property which fairly and reasonably could be regarded as subject to the same, and this court has unequivocally placed itself upon record in favor of construing the statute in the light of such intent. But the proposition now propounded, if adopted, would lead far beyond any point which has thus far been reached, and we do not believe that it would be wise or practicable to adopt it."

<sup>10</sup> Estate of Gibbs, 60 Misc. Rep. 645, 113 N. Y. Supp. 939.

<sup>11</sup> Estate of Horn, 39 Misc. Rep. 133, 78 N. Y. Supp. 979.

the same were attached to the policies, the assignment was held to have vested the right to the policies in the wife when completed by acceptance and recognition, and not to take effect at the death of the testator so as to render them subject to the transfer tax.<sup>72</sup> And where a life policy, payable to the widow of the insured with no right reserved to change the beneficiary, was assigned to the trustee in a testamentary trust created by the insured, but the beneficiary did not relinquish her rights in the policy, it was held not subject to the inheritance tax as a part of his estate.<sup>73</sup>

Where the contract of an agent with an insurance company provides that in case he dies while the agency still continues, his heirs shall be entitled to a commission of five per cent on the amount received by the company on the renewal of certain policies, at his death his heirs inherit, not any part of the premiums, but merely a right to be paid by the insurance company a certain amount of money to be computed on the premiums, and accordingly an inheritance tax is due on the right or claim thus inherited, although the premiums were assessed to the company and taxes were regularly paid on them, and the computation of the commission was made only after deduction of the taxes thus paid.<sup>74</sup>

**§ 63. Deposits in Bank.**—If money on hand or in deposit belonged solely or absolutely to the decedent at the time of his death, there can of course be no doubt that it is, like other forms of property, subject to the inheritance tax. But where money has been

<sup>72</sup> *Estate of Parson*, 51 Misc. Rep. 370, 101 N. Y. Supp. 430, affirmed in 117 App. Div. 321, 102 N. Y. Supp. 168.

<sup>73</sup> *Estate of Bullen*, 143 Wis. 512, 139 Am. St. Rep. 1114, 128 N. W. 109.

<sup>74</sup> *Succession of Fell*, 119 La. 1037, 15 L. R. A., N. S., 267, 44 South. 379.

deposited jointly with another or in trust for another, it frequently becomes a matter of unusual difficulty to determine whether or not the tax can be enforced against it. It has been affirmed that if a savings bank deposit is a mere tentative trust, revocable by the depositor during his lifetime, it is taxable upon his death although the trust then becomes absolute and irrevocable.<sup>75</sup> One depositing his own money in a savings bank in trust for his children, but retaining the right to withdraw the funds at pleasure, thereby grants them an interest taking effect in possession or enjoyment at his death, and as such the funds are taxable; for in such case the owner reserves to himself all the rights of ownership in the deposit until his death, and grants only an interest to take effect in possession or enjoyment after that event.<sup>76</sup>

But a joint deposit in a savings bank, made of sums previously given by a man to his wife, is not taxable upon his death;<sup>77</sup> although it has been decided that a deposit of money belonging to each to their joint credit by a husband and wife in a savings bank indicates that on the death of either the fund belonging to the other shall pass to the survivor, so that such transfer is subject to the inheritance tax.<sup>78</sup>

Where a man gave stock to his wife, and the dividends were deposited at the time of his death in a bank to the credit of both, which deposit was subject to withdrawal by either or the survivor, the money was held not subject to the inheritance tax.<sup>79</sup> And on the death of a married woman, it was decided that balances in joint account belonging to her and her hus-

<sup>75</sup> Estate of Pierce, 132 App. Div. 465, 116 N. Y. Supp. 816.

<sup>76</sup> Estate of Barbey, 114 N. Y. Supp. 725.

<sup>77</sup> Estate of Rosenberg, 114 N. Y. Supp. 726.

<sup>78</sup> Estate of Kline, 65 Misc. Rep. 446, 121 N. Y. Supp. 1090. See, also, Estate of Wilkens, 144 App. Div. 803, 129 N. Y. Supp. 600.

<sup>79</sup> Estate of Graves, 52 Misc. Rep. 433, 103 N. Y. Supp. 571.

band were not subject to inheritance taxation. Such deposit is presumably a contract of joint ownership, vested in both parties at once, with equal right to use and draw from the same during the lifetime of both, unless exhausted sooner, including the right of survivorship to whatever might remain upon the death of the joint owner dying first. That the deposit may come to the survivor is but an incident; and the transfer is not one to take effect in use or enjoyment after death, within the meaning of the transfer tax statute.<sup>70a</sup>

**§ 64. Corporate Stock and Bonds.**—Corporate stock and bonds, as well as cash, are, when their situs can properly be regarded as within the state, subject to the inheritance tax which it imposes.<sup>80</sup> The difficulty in determining the applicability of the tax to such forms of property is to fix the situs, for it may, and not infrequently does, happen that the corporation is organized under the laws of one state, and the owner dies domiciled in another state, while the stock is perhaps physically in a third state. The consideration of this phase of the subject, however, will be postponed to the chapter on "Situs of Property for Purposes of Taxation."

A bequest to a corporation of its debenture bonds passes property to the legatee, and the bonds may be assessed at their market value.<sup>81</sup> Where one has pledged stock as collateral security, and his executor has paid the loan and redeemed the stock, it is presently taxable as part of the estate.<sup>82</sup> But stock pur-

<sup>70a</sup> Estate of Stebbins, 52 Misc. Rep. 438, 103 N. Y. Supp. 563.

<sup>80</sup> Callahan v. Woodbridge, 171 Mass. 595, 51 N. E. 176; Matter of Whiting, 150 N. Y. 27, 55 Am. St. Rep. 640, 34 L. R. A. 232, 44 N. E. 715.

<sup>81</sup> Estate of Rothschild, 71 N. J. Eq. 210, 63 Atl. 615, affirmed, 72 N. J. Eq. 425, 65 Atl. 1118.

<sup>82</sup> Estate of Hurecomb, 36 Misc. Rep. 755, 74 N. Y. Supp. 475.



chased by a broker for a customer, and held as security for the payment of the purchase price, is not taxable after the customer's death, for the broker is the owner subject to the customer's right as pledgee.<sup>83</sup>

In Louisiana the only property excepted from the inheritance tax is such as shall have borne its just proportion of taxes prior to the opening of the succession. State and municipal bonds, though exempt from taxation, do not fall within the exception, nor do shares of stock not taxed, though the corporation in which they are held may have been taxed on its property.<sup>84</sup>

**§ 65. Shares in Joint Stock Association.**—The stock of a joint stock association is similar in its nature to the stock of a corporation, and the latter is regarded as personal property, irrespective of what the character of the corporate property may be. Accordingly, shares in a joint stock association are to be dealt with as personalty in applying laws providing an inheritance tax, although the property of the association is real estate. In determining, for the purpose of this tax, the value of shares in a joint stock association which are not listed in the stock exchange or sold in the open market, the value of the property they represent, including the real estate, should be ascertained.<sup>85</sup>

**§ 66. United States Bonds and Securities.**—The law is well settled that a transfer of United States bonds or securities by will or succession is subject to taxation under the inheritance tax laws of the several states, unless the statutes are so drawn as to exempt such property. There is no doubt that the legislature

<sup>83</sup> Estate of Havemeyer, 32 Misc. Rep. 416, 66 N. Y. Supp. 722.

<sup>84</sup> Succession of Kohn, 115 La. 71, 38 South. 898.

<sup>85</sup> Estate of Jones, 172 N. Y. 575, 60 L. R. A. 476, 65 N. E. 570.

of a state is competent to impose such a tax, since the charge is not on the bonds or securities themselves, but rather upon the transfer thereof or the privilege of receiving them by will or descent, and such conditions can be imposed on that privilege as the law-making power may see fit. Such is the holding of various state courts and also of the federal courts. The fact that the property itself is exempt from taxation is therefore immaterial. And the tax cannot be assailed on the ground that it impairs the obligation of contract or the borrowing power of the United States government.<sup>55</sup>

The transfer by will or descent of United States bonds is not exempt from the operation of the federal

<sup>55</sup> *Plummer v. Coler*, 178 U. S. 115, 44 L. Ed. 998, 20 Sup. Ct. Rep. 829; *Orr v. Gilman*, 183 U. S. 278, 46 L. Ed. 196, 22 Sup. Ct. Rep. 213; *Succession of Levy*, 115 La. 377, 5 Ann. Cas. 871, 8 L. R. A., N. S., 1180, 39 South. 37, affirmed, *Cahen v. Brewster* (1906), 203 U. S. 543, 8 Ann. Cas. 215, 51 L. Ed. 310, 27 Sup. Ct. Rep. 174; *Estate of Sherman*, 153 N. Y. 1, 46 N. E. 1032; *Estate of Whiting*, 2 App. Div. 590, 38 N. Y. Supp. 131; *Estate of Carver*, 4 Misc. Rep. 592, 25 N. Y. Supp. 991; *Matter of Howard*, 5 Dem. Sur. 483; *Strode v. Commonwealth*, 52 Pa. 181; *Wallace v. Myers*, 38 Fed. 184, 4 L. R. A. 171.

The supreme court of the United States in *Plummer v. Coler*, 178 U. S. 115, 44 L. Ed. 998, 20 Sup. Ct. Rep. 829, in recognizing the right of one of the states of the Union to impose a tax on a transfer of United States bonds, uses this language: "In Pennsylvania it has been repeatedly held that the collateral inheritance law of that state, imposing a tax upon the total amount of the estates of decedents, is valid, although the estate may consist in whole or in part of United States bonds; and this upon the principle that what is called a collateral inheritance tax is a bonus, exacted from the collateral kindred and others, as the conditions on which they may be admitted to take the estate left by deceased relative or testator; that the estate does not belong to them, except as a right to it is conferred by the state; that the right of the owner to transfer it to another after death, or of kindred to succeed, is the result of municipal regulation, and must, consequently, be enjoyed subject to such conditions as the state sees fit to impose." The court then adopts with approval the language of Justice Andrew in *Estate of Sherman*, 153 N. Y. 1, 46 N. E. 1032, as follows: "This court has not been called upon to consider the question of the power of the state to prescribe that in ascertaining the value of the property of a decedent for the purpose of fixing a tax, under the collateral inherit-

war revenue act of 1898, by reason of the declaration in United States statutes and on the face of the bonds themselves to the effect that they are exempt from taxation, for, as above stated, the tax is not upon the bonds but upon the transmission thereof."

The New York statute of 1892 imposes a tax on the transfer of property "over which this state has any jurisdiction for purposes of taxation"; and under this statute United States bonds are held exempt from inheritance taxation, since the state has no jurisdiction over them for "purposes of taxation."<sup>87</sup> To quote from the supreme court<sup>88</sup> of that state: "The law in respect to taxable transfers of property in force at the time of the death of the testator only permitted the imposition of such tax upon property 'over which this state has any jurisdiction for the purpose of taxation.' It does not require the citation of authorities to show that a state, in the exercise of the power of taxation,

ance or transfer tax laws, the value of federal securities owned by the decedent shall be included. But we apprehend that the existence of the power cannot be denied upon reason or authority. The tax imposed is not, in a proper sense, a tax upon the property passing by will, or under the statutes of descent or distribution. It is a tax upon the right of transfer by will or under the intestate law of the state. Whether these laws are regarded as a limitation on the right of the testator to dispose of property by will, or upon the right of devisees to take under a will, or the right of heirs or next of kin to succeed to a property of an intestate, is not material. The so-called tax is an exaction made by the state in the regulation of the right of devolution of property of decedents, which is created by law and which the law may restrain or regulate. Whatever the form of the property, the right to succeed to it is created by law, and if the property consists of government securities, the transferee derives his right to take them, as he does his right to take any property of the decedent, under the laws of the state, and the state by these statutes makes the right subject to the burden imposed."

<sup>86</sup> *Murdock v. Ward*, 178 U. S. 139, 44 L. Ed. 1009, 20 Sup. Ct. Rep. 775.

<sup>87</sup> *Estate of Whiting*, 150 N. Y. 27, 55 Am. St. Rep. 640, 34 L. R. A. 232, 44 N. E. 715; *Estate of Sherman*, 153 N. Y. 1, 46 N. E. 1032.

<sup>88</sup> *Estate of Coogan*, 27 Misc. Rep. 563, 59 N. Y. Supp. 111.

has no jurisdiction to tax the obligations of the United States, in violation of the provisions of the United States statutes exempting them from taxation. And it has recently been held in this state that United States bonds are exempt from assessment and taxation, under the transfer tax law of 1892, because they are property over which the state had no jurisdiction for the purposes of taxation.<sup>99</sup> That being so, the surrogate had no jurisdiction to assess a tax on the transfer of these bonds, and the tax was not merely an erroneous one, but illegal for want of any jurisdiction to impose it.”

It has been decided that United States bonds belonging to a nonresident, actually within the state of New York, were not, in October, 1891, property within the meaning of the New York tax law, but were obligations for the payment of money, and not subject to the transfer tax.<sup>99</sup>

**§ 67. Legacy to the United States.**—The United States is, as a government and a body politic and corporate, capable of taking a legacy; and such legacy is subject to state inheritance taxation, and cannot be claimed as exempt on the ground that the tax is on United States property, nor on the ground that it is imposed upon transfers “to persons or corporations exempt by law from taxation.” The tax is not on the property, but on the transfer thereof. In effect, it limits the power of testamentary disposition. This silences the argument that to enforce the tax would violate the well-recognized rule that a state cannot tax the property of the United States. Assuming that the legacy vests in the United States at the mo-

<sup>99</sup> *Estate of Sherman*, 153 N. Y. 1, 46 N. E. 1032; *Estate of Whiting*, 150 N. Y. 27, 56 Am. St. Rep. 640, 34 L. R. A. 232, 44 N. E. 715.

<sup>99</sup> *Estate of Schermerhorn*, 50 Misc. Rep. 233, 100 N. Y. Supp. 480.

ment of the testator's death, yet in contemplation of law the tax is fixed on the succession at the same instant of time. The tax is not imposed on the property of the United States; the property which vests in it is the net amount of the legacy after the inheritance tax is paid. "The act in question," to adopt the language of the supreme court of the United States, "is not open to the objection that it is an attempt to tax the property of the United States, since the tax is imposed upon the legacy before it reaches the hands of the government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it. . . . What the corporations are to which the exemption was intended to apply are indicated by the tax laws of New York, and are confined to those of a religious, educational, charitable, or reformatory purpose. We think it was not intended to apply it to a purely political or governmental corporation like the United States."<sup>91</sup>

**§ 68. Membership in Stock Exchange.**—It has been authoritatively determined, both by state and federal courts, that a seat or membership in a stock exchange is, in a sense, property.<sup>92</sup> But there has been considerable uncertainty as to its taxability as property,<sup>93</sup> and also some doubt as to whether it is subject to the inheritance tax. The question has arisen a num-

<sup>91</sup> *United States v. Perkins*, 163 U. S. 625, 41 L. Ed. 287, 16 Sup. Ct. Rep. 1073, affirming *In re Merriam's Estate*, 141 N. Y. 479, 36 N. E. 505.

<sup>92</sup> *Nashua Sav. Bank v. Abbott*, 181 Mass. 531, 92 Am. St. Rep. 430, 63 N. E. 1058; *Powell v. Waldron*, 89 N. Y. 328, 42 Am. Rep. 301; *Page v. Edmunds*, 187 U. S. 596, 47 L. Ed. 318, 23 Sup. Ct. Rep. 200.

<sup>93</sup> *San Francisco v. Anderson*, 103 Cal. 69, 42 Am. St. Rep. 98, 36 Pac. 1034; *People v. Feitner*, 167 N. Y. 1, 82 Am. St. Rep. 698, 60 N. E. 265.

ber of times in New York. In the first case it was adjudged that a seat or membership in the New York Stock Exchange was a privilege of very substantial value, and subject to taxation under the transfer tax law.<sup>84</sup> In the second case it was determined that such a seat or membership, held by a nonresident, is capital invested in business in the state, and therefore is property; and that it is taxable under the law in relation to taxable transfers.<sup>85</sup>

In a subsequent case it was decided that a stock exchange membership is not subject to the transfer

In the last case cited it is affirmed that a seat in the New York Stock Exchange, while property in a certain sense, is not such personal property as is taxable under the statutes of New York if owned by a resident, and is not taxable when owned by a nonresident, under a statute providing that the personal property of nonresidents is taxed "to the same extent" as if owned by a resident.

<sup>84</sup> Matter of Curtis, 31 Misc. Rep. 83, 64 N. Y. Supp. 574.

<sup>85</sup> Matter of Glendinning, 68 App. Div. 125, 74 N. Y. Supp. 190, affirmed in 171 N. Y. 684, 64 N. E. 1121. "The single question," to quote from the supreme court in this case, "to be determined upon this appeal is whether a seat or membership in the New York Stock Exchange of a nonresident of this state is taxable under the law in relation to taxable transfers. This depends entirely upon whether such a seat is to be considered as personal property. We do not think, in view of the decision of the court of appeals in *People v. Feitner*, 167 N. Y. 1, 82 Am. St. Rep. 698, 60 N. E. 265, that this question is open to discussion. It is true that the appellants seemed to rely upon this authority as sustaining their proposition. But an examination of the opinions delivered by the court in that case shows that, although such a seat in the New York Stock Exchange is not personal property under the restricted definition of the tax law, yet it is undoubtedly capital invested in business in this state, which has a market value and can be bought and sold. If it is capital invested in business in this state, it is property, as it is difficult to see how capital invested in business, which has a market value, and can be bought and sold, does not fall within the term 'property.' The restrictions under which this property is held in no way affect its character. They may detract from or add to its value. As was said by Justice Vann in the opinion in the case cited, 'the money used by him to buy his seat was neither thrown away nor given away, but was used to pay for property of great value, which was the main instrumentality for carrying on the business in which he was engaged.'"

tax as "personal property" under the restricted definition of those words in the statutes of 1896 and 1901.<sup>96</sup> This case, however, was reversed by the court of appeals, holding that under a statute imposing inheritance taxes, and declaring that the words "estate or property" as used therein include all property or interest therein, whether situate within or without the state, a seat in the New York Stock Exchange of which the owner dies seised is subject to taxation.<sup>97</sup>

Proceeds realized from the gratuity fund of the New York Produce Exchange, payable only to the beneficiaries of a deceased member, do not pass by virtue of his will or by any administration of his estate, but by his contract with the exchange, and therefore are not subject to the transfer tax.<sup>98</sup>

§ 69. **Goodwill of Business.**—The goodwill of a business has been thought not to be "personal property" under the restricted definition of those words in the New York statute of 1896, and not real property upon any theory, and therefore not subject to the transfer tax on personal or real estate.<sup>99</sup> This, however, appears erroneous, for clearly the goodwill of a business, at least when considered in connection with the tangible property with which it is associated, is a thing susceptible of ownership and frequently an asset of no inconsiderable value. It therefore is property.<sup>100</sup>

Accordingly, it has been affirmed that under the New York transfer tax law of 1891, subjecting "all

<sup>96</sup> Estate of Hellman, 77 App. Div. 355, 79 N. Y. Supp. 201.

<sup>97</sup> Estate of Hellman, 174 N. Y. 254, 95 Am. St. Rep. 582, 66 N. E. 809.

<sup>98</sup> Estate of Fay, 25 Misc. Rep. 468, 55 N. Y. Supp. 749.

<sup>99</sup> Estate of Dun, 39 Misc. Rep. 616, 80 N. Y. Supp. 657.

<sup>100</sup> As to the nature of goodwill as property, see *George G. Fox & Co. v. Glynn*, 191 Mass. 344, 114 Am. St. Rep. 619, 9 L. R. A., N. S., 1096, 78 N. E. 89; *Kramer v. Old*, 119 N. C. 1, 56 Am. St. Rep. 650, 25 S. E. 813; and as to whether it can be subjected to a property tax, see *Hart v. Smith*, 159 Ind. 182, 95 Am. St. Rep. 280, 58 L. R. A. 949, 64 N. E. 661.

property" which passes by will or the intestate laws to a tax, the goodwill of a newspaper conducted by a joint stock association is property which passes under the will of a deceased member, and the value thereof should be included in determining the amount of his estate subject to the transfer tax,<sup>101</sup> and that the goodwill of the business of a firm is taxable to the estate of the sole owner of the firm, where his will transfers the goodwill, it being "property."<sup>102</sup>

Where the business of a deceased person is continued by his administrator, the goodwill of the business is an asset subject to a transfer tax, under the words "other value in business"; and in determining the value thereof the net earnings of a single year should be multiplied by a certain number of years, the number depending upon the nature of the business.<sup>103</sup>

The value of the goodwill of a business in which the decedent was a partner is to be determined, for purposes of the inheritance tax, as of the date of his death; and, if there was an agreement between the decedent and his copartner whereby the latter was to pay a stipulated amount for the decedent's interest in the goodwill at his death, such agreement must be considered in ascertaining the value of his interest.<sup>104</sup>

**§ 70. Interest in Partnership Property.**—Where a partner has loaned money to the firm and received thereon such profits as are earned by the concern, this is regarded as invested capital and is subject to the transfer tax on his death; and if he has permitted the profits to remain on deposit with the firm, they are likewise deemed taxable assets of his estate.<sup>105</sup> If a

<sup>101</sup> Estate of Jones, 69 App. Div. 237, 74 N. Y. Supp. 702.

<sup>102</sup> Estate of Dun, 40 Misc. Rep. 509, 82 N. Y. Supp. 802.

<sup>103</sup> Estate of Keahon, 60 Misc. Rep. 508, 113 N. Y. Supp. 926.

<sup>104</sup> Estate of Vevanti, 138 App. Div. 281, 122 N. Y. Supp. 954.

<sup>105</sup> Estate of Probst, 40 Misc. Rep. 431, 82 N. Y. Supp. 396.



nonresident at the time of his death is a member of a partnership having assets in New York, his interest therein is considered personal property, rather than a mere chose in action, and is subject to the transfer tax of that state.<sup>106</sup>

Where it is admitted that all the property belonging to a commercial partnership has been regularly assessed, and all taxes thereon duly paid, the interest of a partner in the same property is not a distinct and separate taxable entity, within the Louisiana constitutional provision that the inheritance tax shall not be enforced against property which has borne its just proportion of taxes.<sup>107</sup>

The interest of a nonresident member of a limited partnership association is liable to the inheritance tax, where real and personal property of the association is situated within the state.<sup>107a</sup>

**§ 71. Bequest in Discharge of Debt or Obligation.** It may seem that a bequest in satisfaction of a debt is not a legacy within the meaning of the act taxing legacies, since a legacy implies only bounty or benevolence.<sup>108</sup> Nevertheless it has been declared that all transfers made by will are subject to the transfer tax, irrespective of whether they are made as a gratuity or in discharge of some debt or other obligation.<sup>109</sup> Said the New York court of appeals in the Gould

<sup>106</sup> *Estate of King*, 30 Misc. Rep. 575, 63 N. Y. Supp. 1100, order affirmed, 56 App. Div. 617, 67 N. Y. Supp. 766.

<sup>107</sup> *Succession of Stauffer*, 119 La. 66, 43 South. 928.

<sup>107a</sup> *Estate of Small*, 151 Pa. 1, 25 Atl. 23.

<sup>108</sup> *Estate of Rogers*, 2 Con. Sur. 198, 10 N. Y. Supp. 22. According to *Matter of Underhill*, 2 Con. Sur. 262, 20 N. Y. Supp. 134, when a bequest is made to a creditor on condition that he accept it in full satisfaction of all unsettled accounts and claims against the testator, it is not subject to the inheritance tax if the accounts exceed the sum bequeathed.

<sup>109</sup> *Estate of Rogers*, 71 App. Div. 461, 75 N. Y. Supp. 835, affirmed, 172 N. Y. 617, 64 N. E. 1125.

case,<sup>110</sup> where a son of the testator accepted payment for his services under a provision of the will: "It matters not what the motive of a transfer by will may be, whether to pay a debt, discharge some moral obligation, or to benefit a relative for whom the testator entertained a strong affection, if the devise or bequest be accepted by the beneficiary, the transfer is made by will and the state makes a tax to impinge upon that performance."

Accordingly, it has been decided that a bequest to a physician "in view and in consideration of his unremitting care and attention to me during my years of sickness without asking any reward for services rendered," is subject to the transfer tax;<sup>111</sup> and that a bequest to a priest or his successors to be used in saying low masses for the repose of the soul of the testatrix and three others, is not exempt from the transfer tax as funeral expenses.<sup>112</sup>

Referring to the Gould case above, where the testator's son consented to accept payment for his services under a provision in the will, the New York court, in *Estate of Daniell*,<sup>113</sup> said: "It is only where the devise or bequest is accepted by the beneficiary that the transfer is made by the will, and the statute in question makes a tax to impinge upon that performance." This is in recognition of the well-established rule that a legatee may renounce his legacy, and that when he does so there is no transfer to him, so far as concerns that particular testamentary gift, to which the inheritance tax will attach.<sup>114</sup>

<sup>110</sup> *Estate of Gould*, 156 N. Y. 423, 51 N. E. 287.

<sup>111</sup> *Estate of Doty*, 7 Misc. Rep. 193, 27 N. Y. Supp. 653.

<sup>112</sup> *Estate of McAvoy*, 112 App. Div. 377, 98 N. Y. Supp. 437.

<sup>113</sup> *Estate of Daniell*, 40 Misc. Rep. 329, 81 N. Y. Supp. 1033.

<sup>114</sup> See "Effect of Renunciation of Legacy," *post*, sec. 162.

A bequest of a promissory note to its maker has been held a transfer taxable at its fair market value.<sup>115</sup> And when a bequest of the residue of the estate of the testator includes a note by the legatee, the amount of the note is subject to the legacy tax.<sup>116</sup> Where the testator directed his executor to withdraw one-half of the claims he had presented to his brother's executor, and forgave that half, it was held that this did not relieve any part of the whole sum from taxation (it being a bequest of that half to the estate), and have the effect of making the tax on that half assessable to the executrix in her official capacity and not as an individual.<sup>117</sup>

In Pennsylvania a gift by a testator to his creditor, in satisfaction of a debt, of the precise sum due, is said to fall neither within the letter nor the spirit of the collateral inheritance tax;<sup>118</sup> and a debt released by a will, which was previously barred by the statute of limitation, passes nothing, and the amount of the debt is not liable to be assessed with a collateral inheritance tax.<sup>119</sup>

§ 72. **Advancements and ordinary gifts inter vivos** not in contemplation of death are not within the provisions of the inheritance tax statutes.<sup>120</sup> However, it has been thought that sums loaned and advanced by the testator to his sons are not advancements within this rule, a distinction being made between the words "advance" and "advancement."<sup>121</sup> But a deed of

<sup>115</sup> *Morgan v. Warner*, 45 App. Div. 424, 60 N. Y. Supp. 693, affirmed, 162 N. Y. 612, 57 N. E. 1118.

<sup>116</sup> *Matter of Tuigg*, 15 N. Y. Supp. 548.

<sup>117</sup> *Estate of Wood*, 40 Misc. Rep. 155, 81 N. Y. Supp. 511.

<sup>118</sup> *Forster v. Gillam*, 13 Pa. 340.

<sup>119</sup> *Stinger v. Commonwealth*, 26 Pa. 429.

<sup>120</sup> *Matter of Edgerton*, 35 App. Div. 125, 54 N. Y. Supp. 700, affirmed, 158 N. Y. 671, 52 N. E. 1124; *Matter of Spaulding*, 49 App. Div. 541, 63 N. Y. Supp. 694.

<sup>121</sup> *Matter of Bartlett*, 4 Misc. Rep. 380, 23 N. Y. Supp. 990.

gift to a son, made as an advancement and chargeable as such against his ultimate share of the estate of the father under a will existing at the time of the deed, was held a "succession," under the war revenue act of June 30, 1864, as a conveyance without "valuable and adequate consideration," and chargeable with a tax of one per cent.<sup>122</sup>

<sup>122</sup> United States v. Banks, 17 Fed. 322.

## CHAPTER V.

## POWERS OF APPOINTMENT.

- § 78. Creation of Power as Effecting Taxable Transfer.
- § 79. Exercise of Power as Effecting a Taxable Transfer.
- § 80. Constitutionality of Tax on Exercise of Power.
- § 81. Acts Constituting an Exercise of Power.
- § 82. Change of Realty to Personalty by Equitable Conversion.
- § 83. Nonresidents—Situs of Property.
- § 84. Probate Court Having Jurisdiction.
- § 85. Rate of Taxation—Relationship of Parties.
- § 86. Time for Assessment of Tax.

**§ 78. Creation of Power as Effecting Taxable Transfer.**—Inheritance taxation, in its application to powers of appointment, presents questions that do not lend themselves to an easy solution; and the first of these questions is, What act constitutes the taxable transfer or succession, the creation of the power by the donor, or the execution of the power by the donee? The idea has gained recognition in some jurisdictions that the transfer subject to the tax takes place upon the death of the creator of the power rather than at the time when the power is exercised and becomes operative by the death of the donee of the power; that the source of the title is the instrument creating the power, into which the names of the appointees must be read, and their right of succession vests, not when the power is executed and becomes operative by the death of the donee of the power, but at the time when the instrument which created it went into effect. Hence if a will creating a power of appointment became effective through the death of the testator prior to the enactment of a statute imposing an inheritance tax, bequests made in the exercise of the power after the enactment of such statute are not taxable;<sup>1</sup> the

<sup>1</sup> *Matter of Stewart*, 131 N. Y. 274, 14 L. R. A. 836, 30 N. E. 184; *Will of Harbeck*, 161 N. Y. 211, 55 N. E. 850; *Commonwealth v. Duffield*,

donor of the power of appointment, rather than the donee, is regarded as the decedent whose estate is subject to taxation.<sup>2</sup> Conversely it would follow that if there was a statute imposing a tax when the will creating the power took effect, a modification of the statute prior to the exercise of the power by the donee would not relieve his legatees from liability for the tax, as their interest will be considered as having been acquired as of the time the instrument creating the power went into effect.<sup>2a</sup>

**§ 79. Exercise of Power as Effecting a Taxable Transfer.**—After this interpretation of the law by the courts of New York and Massachusetts the legislatures of these states amended the statutes, and in unmistakable language declared that the act constituting the transfer or succession is, for purposes of inheritance taxation, the execution of the power of appointment by the donee. Under the amended statutes the property is not taxed, nor the original transfer, but the particular transfer through the exercise of the power.<sup>3</sup> The New York statute, as amended, reads:

12 Pa. 277; *Commonwealth v. Williams*, 13 Pa. 29; *Fidelity Trust Co. v. McClain*, 113 Fed. 152, affirmed, 122 Fed. 1020, 57 C. C. A. 679.

<sup>2</sup> *Emmons v. Shaw*, 171 Mass. 410, 50 N. E. 1033. In this case a father devised property to his son for life, subject to his disposition by will, but, in the event that he died intestate, with further limitations as to the fee, and the son disposed of the property by will under the power; and an inheritance tax law was adopted after the death of the father but before the death of the son. The court declined to enforce the tax. This case is cited approvingly in *Winn v. Schenck*, 33 Ky. Law Rep. 615, 110 S. W. 827.

<sup>2a</sup> *Hoyt v. Hancock*, 65 N. J. L. 688, 55 Atl. 1004.

<sup>3</sup> *Minot v. Stevens*, 207 Mass. 588, 33 L. R. A., N. S., 236, 93 N. E. 973; *Matter of Dows*, 167 N. Y. 227, 88 Am. St. Rep. 509, 52 L. R. A. 433, 60 N. E. 439; *Estate of Delano*, 176 N. Y. 486, 64 L. R. A. 279, 68 N. E. 871; *Estate of Fields*, 36 Misc. Rep. 279, 73 N. Y. Supp. 512.

The fact that the property, as to which the power is exercised, is invested in corporations liable to taxation on their own capital and in

"Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omissions or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure."<sup>4</sup> The Massachusetts statute is substantially the same as the New York.<sup>5</sup>

Clearly, this statute imposes the tax upon the transfer effected by the exercise of the power, not upon the property, nor yet upon the original transfer. The effect of conferring a general power of appointment is to invest its donee with a power of disposition as broad as though he were disposing of his own property; in its exercise he, in fact, makes a gift to persons of his own selection.<sup>6a</sup> It is therefore immaterial

bonds exempt from taxation does not relieve the succession resulting from the exercise of the power from the inheritance tax: *Matter of Dows*, 167 N. Y. 227, 88 Am. St. Rep. 509, 52 L. R. A. 433, 60 N. E. 439.

<sup>4</sup> N. Y. Laws 1897, c. 284.

<sup>5</sup> Mass. Stats. 1909, c. 527, sec. 8.

<sup>6a</sup> *Matter of Dows*, 167 N. Y. 227, 88 Am. St. Rep. 509, 52 L. R. A. 433, 60 N. E. 439; *Isham v. New York Assn. for Poor*, 177 N. Y. 218, 69 N. E. 367.

whether or not there was a succession tax in force when the original disposition of the property was made and the power created; and it is unimportant how the power was created, whether by will or by deed. Accordingly, it has been decided that if a testator devises property in trust for a life in being, and provides that at the termination of that life it shall vest in the surviving children of that person and such of the issue of his deceased children as he may designate and appoint by his will, the property so passing by such appointment is subject to the inheritance tax, though at the time of the making of the will there was no such tax in existence as against the descendants of the testator.\* It has also been decided that an inheritance tax is properly imposed upon the exercise, by a last will and testament, of a power of appointment derived from a deed executed before the enactment of any statute imposing a tax upon the succession to the property of a decedent.†

\* *Matter of Dows*, 167 N. Y. 227, 88 Am. St. Rep. 509, 52 L. R. A. 433, 60 N. E. 439.

† *Estate of Delano*, 176 N. Y. 486, 64 L. R. A. 279, 68 N. E. 871. Said the court in this case: "As the tax is imposed upon the exercise of the power, it is unimportant how the power was created. The existence of the power is the important fact, for what may be done under it is not affected by its origin. If created by deed, its efficiency is the same as if it had been created in the same form by will. No more and no less could be done by virtue of it in the one case than in the other. Its effective agency to produce the result intended is neither strengthened nor weakened by the nature of the instrument used by the donor of the power to create it. The power, however or whenever created, authorized the donee by her will to divest certain defeasible estates and to vest them absolutely in one person. If this authority had been conferred by will, instead of by deed, the right to act would have been precisely the same and the power would have neither gained nor lost its force. The statute applies to all powers alike, without distinction on account of the method of creation or the date of creation, and provides that the exercise of the power shall be deemed a taxable transfer of the property affected, the same as if it had belonged absolutely to the donee of the power and had been bequeathed or devised by such donee. As we said through Judge Cullen in the *Dows* case, 167 N. Y. 227, 88 Am.



§ 80. **Constitutionality of Tax on Exercise of Power.**—The New York statute, as thus applied to powers of appointment created before and exercised after its enactment, is constitutional. It does not impair the obligation of contracts, does not take property without due process of law, nor in any way offend constitutional principles. It has been upheld both by the state court of last resort and by the supreme court of the United States in cases where the power was actually exercised by the donee.\* But the second part of the statute,<sup>†</sup> it will be noted, provides that if the donee fails or omits to exercise the power within the time provided therefor, a “transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omissions or failure, in

St. Rep. 509, 52 L. R. A. 433, 60 N. E. 439: ‘Whatever be the technical source of title of a grantee under a power of appointment, it cannot be denied that, in reality and substance, it is the execution of the power that gives to the grantee the property passing under it.’ . . . . No tax is laid on the power, or on the property, or on the original disposition by deed, but simply upon the exercise of the power by will, as an effective transfer for the purposes of the act. If the power had been exercised by deed, a different question would have arisen, but it was exercised by will, and owing to the full and complete control by the legislature of the making, the form and the substance of wills, it can impose a charge or tax for doing anything by will. It is quite immaterial that there was no statute imposing a succession tax of any kind in force when the original disposition of the property was made and the power was created. That transfer is not taxed, and the statute makes no effort to reach it. It is the practical transfer through the exercise of the power by will that is taxed and nothing else. The right of the legislature to impose a tax on the privilege of exercising a power by will is not affected by the fact that no such tax was imposed when the power was created”: *Estate of Delano*, 176 N. Y. 486, 68 N. E. 871, 64 L. R. A. 279. This language of the New York court of appeals is quoted with approval in *Chanler v. Kelsey*, 205 U. S. 466, 51 L. Ed. 882, 27 Sup. Ct. Rep. 550.

\* *Matter of Vanderbilt*, 50 App. Div. 246, 63 N. Y. Supp. 1079, affirmed, 163 N. Y. 597, 57 N. E. 1127; *Estate of Delano*, 176 N. Y. 486, 64 L. R. A. 279, 68 N. E. 871; *Orr v. Gilman*, 183 U. S. 278, 46 L. Ed. 196, 22 Sup. Ct. Rep. 213; *Chanler v. Kelsey*, 205 U. S. 466, 51 L. Ed. 882, 27 Sup. Ct. Rep. 550.

† The statute is set forth in the preceding section.

the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure." This provision the courts of New York seem disinclined to apply to cases where the power was created before the passage of the statute, on the theory that to do so would diminish the value of vested estates, impair the obligation of contracts, and take private property for public use without compensation. But this conclusion was reached by a divided court.<sup>10</sup>

The Massachusetts court, interpreting a similar statute, has declined to follow the theory prevailing in New York. The statute, to quote from Chief Justice Knowlton,<sup>11</sup> "declares in substance that the exercise of the power shall be considered as giving the succession to the appointees, and that the refusal or omission to exercise the power shall be considered as giving the succession to the persons who are to take in default of the exercise of it. The statute treats the result as depending upon the conduct of the donee, who may appoint or refrain from appointing. If he appoints, the succession under the statute is to be treated as determined by him, and the right thus acquired by the appointee is treated as taxable, because received as a benefit under our law. Can there be any doubt of the power of the legislature so to treat the coming of the appointee into the succession? It seems not. It is but a short step farther to apply the second part of the statute, which refers to coming into succession through the conduct of the donee in refus-

<sup>10</sup> *Matter of Lansing*, 182 N. Y. 238, 74 N. E. 882; *Matter of Chapman*, 133 App. Div. 337, 117 N. Y. Supp. 679, affirmed, 196 N. Y. 561, 90 N. E. 1157.

<sup>11</sup> *Minot v. Stevens*, 207 Mass. 588, 93 N. E. 973.

ing or omitting to make an appointment that might carry the succession elsewhere. While he has the power of appointment, he is in control of the succession. He may allow it to go to the person named in the will or deed, or he may transmit it elsewhere. By exercising the power he may even give the appointee's creditors the benefit of it after his death. When property is held subject to such possibilities of disposition, is it usurpation or an unlawful interference with vested rights for the legislature to say that the succession in possession and enjoyment is not yet determined, that it belongs to no one until it is determined, that the determination of it depends upon the will and conduct of the donee of the power, and that when it is determined by his conduct, either by action or refraining from action, it shall be subject to a tax? We think it is in the power of the legislature to say, in reference to succession in possession after the death of the person whose decease is awaited, that property so held is not vested in anybody, and that when it vests in possession, through a proper disposition of it which is dependent upon the will and conduct of the donee, a succession tax shall be imposed. We think that *Chanler v. Kelsey*<sup>12</sup> looks in this direction, although it does not discuss this particular subject. The decision of *Moffitt v. Kelly*<sup>13</sup> is almost, if not, decisive of the question."

**§ 81. Acts Constituting an Exercise of Power.—**Some of the statutes provide, in substance, that the refusal or omission to exercise a power of appointment shall be considered as giving the succession to the persons who are to take in default of the exercise

<sup>12</sup> *Chanler v. Kelsey*, 205 U. S. 466, 51 L. Ed. 882, 27 Sup. Ct. Rep. 550.

<sup>13</sup> *Moffitt v. Kelly*, 218 U. S. 400, 54 L. Ed. 1086, 31 Sup. Ct. Rep. 79.

of it. As has already been seen,<sup>14</sup> the Massachusetts courts enforce this statutory provision and impose the tax therein provided, but the New York courts do not seem so disposed. In the latter state, if the attempt to exercise the power neither increases nor diminishes the estate of the beneficiary as fixed by the original instrument creating the power, a taxable transfer is not effected.<sup>15</sup> But where the power is so exercised as to work a modification of the terms of the instrument creating the power and to create different estates or interests or provide a different procedure for paying over the remainder, making it necessary to resort to the will by which the power was exercised, before title can be established to the property, the transfer is by virtue of the power of appointment and is subject to the tax.<sup>16</sup>

<sup>14</sup> See sec. 80, *ante*.

<sup>15</sup> *Estate of Lansing*, 182 N. Y. 238, 74 N. E. 862; *Estate of Ripley*, 122 App. Div. 419, 106 N. Y. Supp. 844; *Estate of Spencer*, 119 App. Div. 883, 107 N. Y. Supp. 543; *Estate of Mather*, 90 App. Div. 382, 85 N. Y. Supp. 657, affirmed, 179 N. Y. 526, 71 N. E. 1134. In *Winn v. Schenck*, 33 Ky. Law Rep. 615, 110 S. W. 827, the Kentucky court, citing approvingly the above *Lansing* case, says of it: The New York court "held that where property was devised by a man to his daughter for life, and after her to her heirs at law, with the power to devise the remainder by will in such manner and under such limitations as she might desire, and the daughter, in the exercise of this power, devised the property to her own daughter absolutely, the daughter's will operated to transfer nothing that was not given to the heir at law by the grandfather's will, and, as at the time the will of the grandfather took effect there was no law imposing a transfer tax, the property was not subject to said tax."

<sup>16</sup> *Estate of Cooksey*, 182 N. Y. 92, 74 N. E. 880; *Estate of Rogers*, 71 App. Div. 461, 75 N. Y. Supp. 835, affirmed, 172 N. Y. 617, 64 N. E. 1125; *Estate of Warren*, 62 Misc. Rep. 444, 116 N. Y. Supp. 1034. The following is an extract from this last case:

"In *Matter of Vanderbilt*, 50 App. Div. 246, 63 N. Y. Supp. 1079, affirmed, 163 N. Y. 597, 57 N. E. 1127, the testator directed that upon the death of Cornelius, the fund should be paid to his lawful issue in such shares or proportions as Cornelius might by his last will have directed or appointed. Cornelius by will made an unequal division among

Where a will gives the devisee an absolute right to dispose of the property at pleasure, he takes the fee, and a devise over is inoperative.<sup>17</sup> Hence when such a will is made by a man to his wife, and she takes a fee, the heirs, on her death, take from her, and are subject to an inheritance tax imposed by a statute enacted before her death but after his.<sup>18</sup> In New York a devise by a man of all his real estate to his wife during life "to be retained or disposed of as she may think proper," no remainder or trust being limited

his children, and a tax was upheld. In the Delano case, 176 N. Y. 486, 64 L. R. A. 279, 68 N. E. 871, the power was 'to give . . . in such manner and proportions as she may appoint,' among several classes named, and, in event of her failure to appoint, the estate was to be divided among the persons composing those classes. The power was exercised by appointing one person to receive the whole estate, and a tax was held to be assessable. In *Matter of Dows*, 167 N. Y. 227, 88 Am. St. Rep. 509, 52 L. R. A. 433, 60 N. E. 439, the power declared that the estate should 'vest absolutely and at once in such of his children him surviving and the issue of his deceased children as he [the donee of the power] may by his last will and testament designate and appoint, and in such manner and upon such terms as he may legally impose.' The power was exercised by creating life estates in his children dependent upon a term of years or a prior death and giving the remainder of each life estate to the other child. A tax was upheld. The principle applied in these and other cases was that, the power being effectively exercised, and it being necessary to resort to the will, by which it was exercised, before the title could be established to the property claimed, the transfer was by force of the power of appointment and was subject to taxation. The cases in which the tax was not upheld [*Matter of Lansing*, 182 N. Y. 238, 74 N. E. 882; *Estate of Backhouse*, 110 App. Div. 737, 96 N. Y. Supp. 466, affirmed, 185 N. Y. 544, 77 N. E. 1181] apply the reverse of this principle."

In *Estate of Potter*, 51 App. Div. 212, 64 N. Y. Supp. 1013, a man devised one-fifth of his residuary estate to trustees to pay the income to his daughter during her life, the property to go in equal proportions at her death to her surviving issue. He also gave her power to appoint, by will, such share among his descendants living at her death. She appointed the property by her will in equal proportions among her daughters, excluding her sons. The property thus appointed was held taxable.

<sup>17</sup> See the note in 139 Am. St. Rep. 89.

<sup>18</sup> *Commonwealth v. Stoll*, 132 Ky. 234, 114 S. W. 279, 116 S. W. 687.

or created, gives her the fee; and it is not proper to assess a transfer tax on his heirs on the theory that the realty descended from him to them, merely because she died without exercising her power of disposition.<sup>19</sup>

**§ 82. Change of Realty to Personalty by Equitable Conversion.**—It has been affirmed in New York that transfers under a power of appointment, given the beneficiary by a will creating a trust in real estate, are subject to the inheritance tax, if at the time of the exercise of the power, subsequent to the passage of the statute imposing such tax, the property was in the form of personalty, having been converted thereto by the trustees under a power of sale in the will, although at the time when the original testator died it was not, as real estate, subject to the inheritance tax.<sup>20</sup> It has also been decided in that state that when real estate is conveyed to trustees with power to sell or mortgage, and with a provision that at the death of the grantor it should be held in trust for her daughters, each one of them being given power to appoint by will her share among her issue, in default of such appointment her share to belong to her surviving issue, and the trustees convert the estate into personal property, and the daughter dies leaving issue but without having exercised the power of appointment, the transfer of the property on her death is subject to the inheritance tax, although as real estate it would not be taxable. The doctrine of equitable conversion cannot be invoked, says the court, for the purpose of exempting property from taxation.<sup>21</sup>

<sup>19</sup> *Matter of Lynn*, 34 Misc. Rep. 681, 70 N. Y. Supp. 730.

<sup>20</sup> *Matter of Dows*, 167 N. Y. 227, 88 Am. St. Rep. 509, 52 L. R. A. 433, 60 N. E. 439.

<sup>21</sup> *Matter of Bartow*, 30 Misc. Rep. 27, 62 N. Y. Supp. 1000.

§ 83. **Nonresidents—Situs of Property.**—It has already been noted, in preceding sections of this chapter, that it is the exercise of a power of appointment, not its creation, which effects the taxable transfer; and that the estate, so far as concerns the succession tax, is considered as though it belonged absolutely to the donee of the power and was by him bequeathed or devised by will. For the purpose of the tax, the execution of the power is deemed the source of title of the appointees.

Again, the basis of the power to tax is the fact of dominion over the subject of taxation at the time the tax is to be imposed; but the subject of taxation may be either property of a tangible character or a privilege conferred by statute. Therefore, the right of the state to tax is limited to cases where it has dominion or jurisdiction over the property or of the privilege; and an instance or example of such privilege is the permission granted by the state to the appointee under a power of appointment to take property by virtue of the exercise of the power.<sup>22</sup>

Hence it has been held that in case of a transfer effected through the exercise, by a resident of New Jersey, of a power of appointment created by the will of a resident of New York, only the transfer of so much of the property as is situated in New York is taxable in that state.<sup>23</sup> It has also been decided that

<sup>22</sup> Estate of Kissell, 65 Misc. Rep. 443, 121 N. Y. Supp. 1088, affirmed, 142 App. Div. 934, 127 N. Y. Supp. 1127.

<sup>23</sup> Estate of Kissell, 65 Misc. Rep. 443, 121 N. Y. Supp. 1088, affirmed, 142 App. Div. 934, 127 N. Y. Supp. 1127. Said the court in this case: "As the power of appointment given to the decedent herein was exercised by her while a resident of the state of New Jersey, and was consummated by the probate of her will under the laws of the state of New Jersey, the general privilege of permitting all the property included within the power to pass to the beneficiaries appointed by the decedent was a privilege granted by the state of New Jersey, and not by the state of New York. The only privilege granted by the state of New York was to permit the transfer of the property located in

in the event of a transfer effected by the exercise, by a resident of Rhode Island, of a power of appointment created by a resident of New York, is not taxable in New York, the property being bonds and mortgages physically situated in New Jersey, and the bulk of the trust estate being secured by mortgages on real estate within the state of New York.<sup>24</sup>

When a man by will exercised a power of appointment as to property situated in New York in favor of his wife, who disposed of the property by will which was probated in another state, the property, although removed from New York before distribution under her will, was held subject to the inheritance tax.<sup>25</sup> But where a nonresident testator, whose property was entirely without the state, left specified property in trust for his daughter for life, with power to appoint the remainder after the trust, and the trustee was a resident, and thereafter the daughter, then a resident of the state, executed the power by will, it was decided that this exercise was not a taxable transfer.<sup>26</sup> It has also been decided that an estate of a nonresident testator, acquired as appointee named by a legatee for life, with power to name the remainderman, may be assessed prior to the administration of the estate of the legatee, who dies shortly before the appointee.<sup>27</sup> Where a resident of the state gave a power of appointment by her will, and the appointee, also a resident

New York to pass to the appointees in accordance with the provisions of the will probated in New Jersey. Therefore the jurisdiction of the state of New York to tax the transfer of property passing under the will of decedent is limited to the property situated in this state at the time of her death."

<sup>24</sup> *Estate of Fearing*, 138 App. Div. 881, 123 N. Y. Supp. 396.

<sup>25</sup> *Estate of Lord*, 111 App. Div. 152, 97 N. Y. Supp. 553, affirmed, 136 N. Y. 549, 79 N. E. 1110.

<sup>26</sup> *Estate of Thomas*, 39 Misc. Rep. 136, 78 Ky. Supp. 981.

<sup>27</sup> *Estate of Chabot*, 44 App. Div. 340, 60 N. Y. Supp. 927, affirmed, 167 N. Y. 280, 60 N. E. 598.



of the state, exercises the appointment by will, the beneficiary becomes liable under the transfer tax of New York, although the property, real and personal, is situated without the state.<sup>28</sup>

**§ 84. Probate Court Having Jurisdiction.**—Since it is the exercise, not the creation, of a power of appointment which effects the transfer against which the tax is enforced, the surrogate of the county in which the donee of the power resided at the time of his death, and in which his will is probated, and not the surrogate of the county in which the creator of the power resided, has jurisdiction to determine whether the transfer is taxable.<sup>29</sup> Where the donee of a power, who is a nonresident of the state, exercises the power in connection with real property in

<sup>28</sup> *Estate of Hull*, 111 App. Div. 322, 97 N. Y. Supp. 701, affirmed, 186 N. Y. 586, 79 N. E. 1107. "We are of opinion," said the court in reversing the surrogate's decision in this case, "that the learned surrogate has fallen into error in reversing the original decree in this matter, due to the confusion of the question by an entirely irrelevant detail in relation to the situs of the property which passed to the said Ida M. Hull. The question is not where the property was located, or whether it was real estate or personal property, but whether the beneficiary came into its possession through the exercise of a privilege conferred by the state of New York. . . . It being the privilege upon the right to succession to property by means of a will that is taxed, and the subject of the litigation being within the jurisdiction of the state, it seems clear that the beneficiary under the power of appointment contained in the will of Caroline C. Hull, a resident of this state, upon the exercise of that power by Wager J. Hull, likewise a resident of this state, is bound to pay the tax imposed upon that privilege, regardless of the question of where the property to which the power related was located. Ida M. Hull gets all of her rights in and to the property by reason of the exercise of the power (a privilege granted by the state of New York), and she may not be relieved from that obligation because of the fact that the property itself was without the jurisdiction of the state at the time the power was exercised. That is an entirely irrelevant matter."

<sup>29</sup> *Estate of Seaver*, 63 App. Div. 283, 71 N. Y. Supp. 544; *People v. Williams*, 69 Misc. Rep. 402, 127 N. Y. Supp. 749.

the state, the surrogate court in the county where the land is situated has jurisdiction to assess the tax.<sup>20</sup>

**§ 85. Rate of Taxation—Relationship of Parties.** The relationship of the parties, which determines the rate of taxation, or whether any tax at all can be assessed, is the relationship between the donee of the power of appointment and the appointees. This necessarily follows from the propositions that the donee is regarded as devising to the appointees property of which he is the absolute owner, and that it is his exercise of the power, not the creation of the power, which effects the taxable transfer.<sup>21</sup>

**§ 86. Time for Assessment of Tax.**—As the exercise of a power of appointment, rather than the creation of the power, effects the transfer which is taxable, remainders subject to the power of appointment are not taxable until the time comes for the exercise of the power to appoint conferred upon the life beneficiary.<sup>22</sup> The tax is to be assessed at his death on the present value of all the property passing under the power.<sup>23</sup> Remainders created in a trust fund by the exercise of a power of appointment are subject to taxation at the time of the transfer under such act,

<sup>20</sup> Estate of Lowndes, 60 Misc. Rep. 506, 113 N. Y. Supp. 1114.

<sup>21</sup> Estate of Seaver, 63 App. Div. 283, 71 N. Y. Supp. 544; Estate of Walworth, 66 App. Div. 171, 72 N. Y. Supp. 984; Estate of Rogers, 71 App. Div. 461, 75 N. Y. Supp. 835, affirmed, 172 N. Y. 617, 64 N. E. 1125.

The rate of taxation will be found discussed in the very recent case of Estate of Burgess (N. Y.), 97 N. E. 591.

<sup>22</sup> Estate of Howe, 86 App. Div. 286, 83 N. Y. Supp. 825, affirmed, 176 N. Y. 570, 68 N. E. 1118; Estate of Burgess (N. Y.), 97 N. E. 591.

<sup>23</sup> Estate of Tucker, 27 Misc. Rep. 616, 59 N. Y. Supp. 699. But see Hoyt v. Hancock, 65 N. J. Eq. 688, 55 Atl. 1004. That the value of the property is determinable as of the date of the death of the donee of the power, rather than as of the date of the death of the creator of the power, see Fisher v. State, 106 Md. 104, 66 Atl. 661.

if they are absolute and not subject to be divested or to fail in any contingency whatever, and their present value is determined by aid of the table of annuities.<sup>24</sup>

<sup>24</sup> *Matter of Dows*, 167 N. Y. 227, 88 Am. St. Rep. 509, 59 L. R. A. 453, 60 N. E. 439.

## CHAPTER VI.

## LIFE ESTATES, REMAINDERS, AND CONTINGENT INTERESTS.

- § 90. Life Estates and Annuities.
- § 91. Vested Remainders.
- § 92. Future and Contingent Estates—Earlier New York Rule.
- § 93. Future and Contingent Estates—Later New York Rule.
- § 94. Future Contingent Estates—Illinois Rule.
- § 95. Future Contingent Estates—Minnesota Rule.
- § 96. Future Contingent Estates—Pennsylvania Rule.
- § 97. Future Contingent Estates—Wisconsin Rule.
- § 98. Future Contingent Estates—Tennessee Rule.
- § 99. Future Contingent Estates—Massachusetts Rule.
- § 100. Future Contingent Estates—United States Rule.
- § 101. Person or Fund Liable for Tax.
- § 102. Amount of Tax on Contingent Remainder.
- § 103. Law Governing Tax—Retrospective Statute.

§ 90. Life Estates and Annuities are not overlooked by the inheritance tax statutes; their passing by last will and testament are made transfers presently taxable, and in some, perhaps all, jurisdictions this is true although they may be divested or cut down to an estate for years by the act or omission of the life tenant.<sup>1</sup> The value of the life estate is ordinarily ascertainable by aid of mortality tables. In New York it is calculated by the methods and stand-

<sup>1</sup> In *re Hoyt*, 37 Misc. Rep. 720, 76 N. Y. Supp. 504. In *Estate of Phm*, 37 Misc. Rep. 466, 75 N. Y. Supp. 940, a devisee was held taxable as for an estate for life, although she might, by marrying, cut down the estate to one for a term of years only. But in an earlier case it was decided that the value of a bequest by the testator to his widow for life or until she again married could not be determined for purposes of the transfer tax until the termination of her estate: *Estate of Millward*, 6 Misc. Rep. 425, 27 N. Y. Supp. 286; and the New York court of appeals, under the former statute of that state, affirmed that the value of a life estate subject to determination by the remarriage of the life tenant could not be ascertained until the estate terminated: *Matter of Sloane*, 154 N. Y. 109, 47 N. E. 978. The New York statute now provides that "where an estate for life or for years can be divested by the

ards of mortality and value employed by the superintendent of insurance. In one case this theory of computation was applied, even though the life tenant had died before the making of the appraisalment.<sup>2</sup> But in a subsequent case this theory was departed

act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting": Laws 1911, p. 2116.

When a testator, by his will, passes his residuary estate to his brother, and by a codicil directs him to pay C. one thousand dollars a year for life, and to execute to her an obligation to that effect, the annuity to C. is a charge on the residue, and property therein passes which may be taxed at its present worth: *Estate of Rothschild*, 71 N. J. Eq. 210, 63 Atl. 615, 72 N. J. Eq. 425, 65 Atl. 1118.

A gift in lieu of dower, of eight thousand dollars payable annually in equal installments, is held not an annuity in *Chisholm v. Shields*, 67 Ohio St. 374, 66 N. E. 93.

There is a distinction between income and an annuity. The former embraces only the net profits after deducting all necessary expenses and charges; the latter is a fixed amount payable absolutely and at stated intervals: *Peck v. Kinney*, 143 Fed. 76, 74 C. C. A. 270, holding that a bequest was taxable as an annuity, not as a gift of income, as provided by the war revenue act of 1898.

Where a will, after giving annuities to the sisters of the testator, bequeathed the residue of the estate to a university, and the executor, pursuant to recommendations in the will, purchased the annuities from an insurance company, in fixing the amount of the transfer tax to be paid by the residuary legatee, the court will deduct the amount so paid for the annuities, notwithstanding such amount exceeds the sum which the state superintendent of insurance determines the annuities to be worth: *Matter of Hutchinson*, 105 App. Div. 487, 94 N. Y. Supp. 354.

Where a man devises land to his son's wife and directs the devisee to pay out of the rents and profits of the land the sum of two thousand dollars a year to his stepdaughter in equal quarterly payments, and further directs that "all the bequests of money in this will made are to be paid without deductions for state tax," it has been held that the annuity is chargeable with the collateral inheritance tax, and there appearing no intention in the will to distinguish the bequest in money payable at stated periods out of the rents and profits of the land from bequests of round sums of money, the tax on the annuity must be paid out of the residuary estate: *Estate of Lea*, 194 Pa. 524, 45 Atl. 357.

<sup>2</sup> In *re Jones*, 28 Misc. Rep. 356, 59 N. Y. Supp. 963. In appraisals under the statute of 1885, the value of a life estate was estimated by reference to the tables of mortality adopted by the general rules of practice: In *re Robertson*, 5 Dem. Sur. (N. Y.) 92. See *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101.

from in ascertaining the value of a remainder, where the life tenant had greatly exceeded the expectancy of life and encroached on the principal before his death.<sup>3</sup> And the federal courts, in applying the war revenue act of 1898, have declined to resort to mortality tables for the purpose of ascertaining a life expectancy when the period of that life had already been determined.<sup>4</sup> They have also declined to use mortality tables to ascertain the value of the remainderman's interest where the division of the residue of the testator's estate was postponed until the death or remarriage of his widow, for, observed the court, if the use of mortality tables are permissible in a proper case, they should not be used here, since one of the contingencies contemplated by the will is the remarriage of the widow, and, while the probability of death may perhaps be approximately estimated from the recorded experience of insurance companies, there are as yet no statistics available from which the probability of remarriage may even be conjectured.<sup>5</sup> In Massachusetts, however, the valuation of the contingent remainder of property devised to an exempt person for life is to be made as of the date of the testator's death, according to the rule laid down in the statute, by actuaries' combined experience tables, and not according to the time of the actual termination of the life estate, although such termination occurs before the valuation is made.<sup>6a</sup>

In fixing the tax upon annuities created by will, the probable duration of the life of the annuitant is ascertained by the rule and standard of mortality employed in ascertaining the value of policies of life insurance and annuities. Upon the value of the annuity thus

<sup>3</sup> Estate of Hall, 36 Misc. Rep. 618, 73 N. Y. Supp. 1124.

<sup>4</sup> Herold v. Kahn, 159 Fed. 608, 86 C. C. A. 598.

<sup>5</sup> Herold v. Shanley, 146 Fed. 20, 76 C. C. A. 478.

<sup>6a</sup> Howe v. Howe, 179 Mass. 546, 55 L. R. A. 626, 61 N. E. 225.

determined the amount of the transfer tax is computed and becomes payable forthwith out of the principal fund set aside for creating the annuity. Should this fund happen to be the residuary estate of the testator, the tax paid upon the annuity is returned to such estate by deducting from each annual payment of the annuity the proportionate part of the tax, to be ascertained by dividing the amount of the tax paid by the number of years the annuity will probably continue.\*

The Massachusetts statute contemplates that the tax is to be paid out of the annuity as soon as the annuity becomes payable, and at the time when payments on account of it are made. "The effect of this construction," to use the language of Justice Field, "may be that the first payment or payments on account of the annuity will be exhausted by the tax. Other methods of collecting the tax might have been adopted, such as collecting the tax on each payment and deducting it from such payment, and then the tax would be collected proportionately to the amounts paid so long as the annuity was payable, but the method found in the statute is one, we think, which the legislature could adopt."†

Under the Illinois statute a present inheritance tax cannot be imposed upon each annuitant to the full extent of his proportionate share of the entire fund from which the annuity is to be paid, although by joint action of all annuitants the entire income may be divided between them, where the will limits the amount to be paid to each in the absence of such joint action, and no increase can be made without the consent of all.\*

\* In *re Tracy*, 179 N. Y. 501, 72 N. E. 519.

† *Minot v. Winthrop*, 162 Mass. 113, 26 L. R. A. 259, 38 N. E. 512.

\* *People v. McCormick*, 208 Ill. 437, 64 L. R. A. 775, 70 N. E. 350.

§ 91. **Vested Remainders.**—Whatever uncertainty there may be as to the application of inheritance tax statutes to contingent remainders, and there is no little of it, as will presently appear, there seems to be no doubt that ordinary vested remainders, not subject to any condition or contingency, are presently taxable under the general system of inheritance taxation now in vogue.\* And the fact that the owner of

\* *Ayers v. Chicago Title etc. Co.*, 187 Ill. 42, 58 N. E. 318; *People v. McCormick*, 208 Ill. 437, 64 L. R. A. 775, 70 N. E. 350; *Matter of Dows*, 167 N. Y. 227, 88 Am. St. Rep. 509, 52 L. R. A. 433, 60 N. E. 439; *Estate of Vinot*, 7 N. Y. Supp. 517; *Estate of Bogert*, 25 Misc. Rep. 466, 55 N. Y. Supp. 751; *Estate of Sherman*, 30 Misc. Rep. 547, 63 N. Y. Supp. 957; *Estate of Runcie*, 36 Misc. Rep. 607, 73 N. Y. Supp. 1120; *Estate of Clarke*, 39 Misc. Rep. 73, 78 N. Y. Supp. 869; *Commonwealth's Appeal*, 127 Pa. 438, 17 Atl. 1094; *Brown v. Kinney*, 128 Fed. 310.

Vested remainders for life and contingent remainders absolute are undoubtedly embraced in the words "all property in possession or expectancy" and "all estates, real, personal and mixed, of every kind whatsoever": *Bailey v. Drane*, 96 Tenn. 16, 33 S. W. 573.

The value of a vested remainder, for purposes of the inheritance tax under the New York statute of 1892, is the value of the whole estate less the value of the life estate: *Estate of Lange*, 55 N. Y. Supp. 750; *Estate of Bogert*, 25 Misc. Rep. 466, 55 N. Y. Supp. 751.

Where corporate stock is bequeathed to one for life, with power to invest and reinvest it, with remainder to another, the vested interest of the remainderman is subject to the inheritance tax, regardless of whether the life tenant is entitled to the possession of the corpus: *Estate of Bushnell*, 73 App. Div. 325, 77 N. Y. Supp. 4, affirmed, 172 N. Y. 649, 65 N. E. 1115.

A bequest for life to the testator's mother, with remainder to his sister, upon the death of the mother, vests the entire estate, legal and equitable, in the remainderman, and a residuary legatee of the sister takes the remainder subject to the inheritance tax. And a bequest to the testator's widow for life, with remainder to his son and daughter subject to a power of appointment by the widow, who exercises the power in favor of the daughter by will admitted to probate on the day of the death of the daughter, vests in the daughter upon the death of the father, passes under the will of the former to her residuary legatee, and is subject to the tax. Where there has been no settlement of the executor's accounts under the will of the mother, and hence the amount of the residuary estate, if any, is unascertainable, the amount to which the daughter was entitled as residuary legatee is not subject to the tax: *Estate of Zefita*, 167 N. Y. 280, 60 N. E. 598, affirming 44 App. Div. 340, 60 N. Y. Supp. 927.



the prior life estate is exempt does not relieve the owner of the remainder from the tax.<sup>10</sup> The present value of the remainder, for purposes of the inheritance tax, is susceptible of ready computation by aid of mortality tables,<sup>11</sup> and the New York statute contemplates that, the respective values of the life estate and remainder having been ascertained, the tax shall be computed and paid forthwith out of the property transferred. "The result is that the life tenant loses, during the continuance of his estate, the interest upon the corpus of the trust so paid out, and eventually the remainderman receives his estate diminished by the amount of such payment."<sup>12</sup>

**§ 92. Future and Contingent Estates—Earlier New York Rule.**—Until quite recently the taxation of future contingent estates or remainders in New York was governed by the following statute: "Estates in expectancy which are contingent or defeasible shall be appraised at their full undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited." Under this statute it was repeatedly held that future contingent estates therein mentioned were not taxable until they vested in possession and the beneficial owner thereby ascertained. The taxation of such interests was postponed until the contingency was settled. To the mind of the courts the law in its lan-

<sup>10</sup> *Appeal of the Commonwealth*, 127 Pa. 435, 17 Atl. 1094; *Bailey v. Doane*, 96 Tenn. 16, 33 S. W. 573.

<sup>11</sup> *Matter of Dows*, 167 N. Y. 227, 88 Am. St. Rep. 509, 52 L. R. A. 433, 60 N. E. 439; *Estate of Lange*, 55 N. Y. Supp. 750; *Estate of Bogert*, 25 Misc. Rep. 466, 55 N. Y. Supp. 751.

<sup>12</sup> *Matter of Tracy*, 179 N. Y. 501, 72 N. E. 519.

guage gave abundant evidence of an intent to subject only real and beneficial interests to taxation, and nothing in its policy justified the imposition of such a burden where no corresponding benefit had been received; the law did not contemplate the taxation of mere possibilities or chances of the acquisition of property, including not only contingent estates, but also estates technically vested but liable to be divested. Such were not to be taxed until the contingencies had passed or been fulfilled and the right to succeed to the property become certain and absolute.<sup>18</sup> "For

<sup>18</sup> Estate of Cager, 111 N. Y. 343, 18 N. E. 866; Matter of Stewart, 131 N. Y. 274, 14 L. R. A. 836, 30 N. E. 184; Matter of Curtis, 142 N. Y. 219, 36 N. E. 887; Matter of Hoffman, 143 N. Y. 327, 38 N. E. 311; Matter of Roosevelt, 143 N. Y. 120, 25 L. R. A. 695, 38 N. E. 281; Matter of Davis, 149 N. Y. 539, 44 N. E. 185; Matter of Gibson, 157 N. Y. 680, 51 N. E. 1090. To the same effect, see *In re Lefever*, 5 Dem. Sur. (N. Y.) 184; *In re Hopkins*, 6 Dem. Sur. (N. Y.) 1; *In re Surrogate of Cayuga County*, 46 Hun (N. Y.), 657; Estate of Wallace, 4 N. Y. Supp. 465; Estate of Wheeler, 1 Misc. Rep. 450, 22 N. Y. Supp. 1075; Estate of Wescott, 11 Misc. Rep. 589, 33 N. Y. Supp. 426; Estate of Langdon, 11 App. Div. 220, 43 N. Y. Supp. 419; Estate of Travis, 19 Misc. Rep. 393, 44 N. Y. Supp. 349; Estate of Eldridge, 29 Misc. Rep. 734, 62 N. Y. Supp. 1026; Estate of Howell, 34 Misc. Rep. 432, 69 N. Y. Supp. 1016; Estate of Lynn, 34 Misc. Rep. 681, 70 N. Y. Supp. 730; Estate of Plum, 37 Misc. Rep. 466, 75 N. Y. Supp. 940; Estate of Clarke, 39 Misc. Rep. 73, 78 N. Y. Supp. 869; Estate of Babcock, 81 App. Div. 645, 81 N. Y. Supp. 1117; Estate of Le Brun, 39 Misc. Rep. 516, 80 N. Y. Supp. 486; *Miller v. Tracy*, 93 App. Div. 27, 86 N. Y. Supp. 1024; Estate of Naylor, 120 App. Div. 738, 105 N. Y. Supp. 667.

In *Estate of Chesebrough*, 34 Misc. Rep. 365, 69 N. Y. Supp. 848, a devise to a corporation to be created on certain contingencies, but which had not in fact been formed, was held not taxable.

According to the *Davis* case above, if the person to whom property passes in remainder, under the will of a testator who died while the inheritance tax act of 1885 was in force, and so liable to taxation thereunder, cannot be known until the death of the life tenant (as where a devise or bequest is to one for life, with remainder over to the children of the life tenant who may be living at his decease), the tax on the estate transferred to the remainderman does not accrue until the death of the life tenant, and interest upon the tax is chargeable only from that date.

In the above *Curtis* case the will created trusts for the benefit of the testatrix's two daughters and two grandchildren named, each trust for

taxation," to adopt the language of Justice Finch, "is a hard fact, and should attach only to actual and practical ownership, and may properly be compelled to wait until chances and possibilities develop into the truth of an actual estate possessed, or to which there exists an absolute right of future possession."

**§ 93. Future and Contingent Estates—Later New York Rule.**—Subsequently, in 1899 and 1900, the New York statute was materially changed so as to read: "Whenever a transfer of property is made, upon which there is, or in any contingency there may be, a tax imposed, such property shall be appraised at its clear market value immediately upon such transfer, or as soon thereafter as practicable. The value of every future or limited estate, income, interest or annuity

the life of the beneficiary. The remainders were given one-half to such of her nephews and one-half to such of her nieces named as should be living at the time of the successive termination of each trust; if any of them should then be dead leaving issue, to such issue. It was decided that the remainders were not subject to taxation under the act of 1885 until the successive termination of each trust; that it could not until then be determined whether the trust fund would pass to persons in whose hands it would be taxable, or to others in whose possession it would be exempt, as in the case of the death of the nephews or of the nieces prior to the expiration of the trust the one-half of the remainder would go to the heirs of the testatrix; and that conceding there was, upon the death of the testatrix, a technical vesting of the remainders in the beneficiaries named, this nominal fee might never become a taxable estate.

Said Justice Finch in the Hoffman case above: "We are obliged to follow one of two lines of construction. We must open all the nice and difficult questions which arise under a will as to the vesting of technical legal estates although future and contingent, and assess the tax upon what are in reality only possibilities and chances, and so complicate the statute with the endless brood of difficult questions which gather about the construction of wills; or we must construe it in view of its aim and purpose and the object it seeks to accomplish, and so subordinate technical phrases to the facts of actual and practical ownership. For taxation is a hard fact, and should attach only to such ownership, and may properly be compelled to wait until chances and possibilities develop into the truth of an actual estate possessed, or to which there exists an absolute right of future possession."

dependent upon any life or lives in being, shall be determined by the rule, method and standard of mortality and value employed by the superintendent of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies, except that the rate of interest for making such computation shall be five per centum per annum. . . . When property is transferred in trust or otherwise, and the rights, interests or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happenings of any of the said contingencies or conditions, would be possible under the provision of this article, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred." It thus appears that whenever a transfer of property is made, upon which there is, or by any contingency there may be, a tax imposed, the property is to be appraised at its clear market value and the transfer tax is due and payable forthwith out of the property transferred. The tax on contingent remainders, therefore, is to be paid forthwith out of the corpus of the estate transferred.<sup>14</sup>

"By this amendment the legislature clearly intended to change the law upon the subject, and to make the transfer tax upon property transferred in trust payable forthwith. The tax is not required to be paid by the conditional transferee, for by the provisions of the statute it is to be paid 'out of the property transferred'; so that whoever may ultimately take the

<sup>14</sup> Estate of Tracy, 179 N. Y. 501, 72 N. E. 519; Estate of Brez, 172 N. Y. 609, 64 N. E. 958; Estate of Post, 85 App. Div. 611, 82 N. Y. Supp. 1079.

property takes that which remains after the payment of the tax. This amendment makes provision for property transferred in trust. Each trust estate created is to be separately appraised, and the tax determined according to the percentage fixed by the statute for those who are contingently entitled to the estate; and, when fixed, the tax is forthwith payable out of the trust estate."<sup>15</sup>

The constitutionality of the New York statute, as thus amended, has been recognized by the court of appeals of that state.<sup>16</sup> And the supreme court of the United States has held that a tax on remainders before the precedent estate terminates and the remainders vest in possession does not violate the fourteenth amendment of the federal constitution.<sup>17</sup> The court of appeals, however, has called attention to what it considers an inequality caused by the statute, and has suggested a remedy therefor.<sup>18</sup>

In *Estate of Vanderbilt*,<sup>19</sup> the court in construing the transfer tax law as affecting payment upon contingent remainders, and holding that the tax was payable forthwith out of the property transferred, said through Justice Haight: "It seems to me clear that the legislature by this amendment intended to change the law upon the subject and to make the transfer tax upon

<sup>15</sup> *Estate of Vanderbilt*, 172 N. Y. 69, 64 N. E. 782; *Estate of Hoyt*, 44 Misc. Rep. 76, 89 N. Y. Supp. 744.

<sup>16</sup> *Estate of Vanderbilt*, 172 N. Y. 69, 64 N. E. 782; *Estate of Brez*, 172 N. Y. 609, 64 N. E. 958. In *Estate of Lind*, 132 App. Div. 321, 117 N. Y. Supp. 49, affirmed, 196 N. Y. 570, 90 N. E. 1161, where, so far as known, the decedent left no family or next of kin, there was held to be no transfer "dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged."

<sup>17</sup> *Orr v. Gilman*, 183 U. S. 278, 46 L. Ed. 196, 22 Sup. Ct. Rep. 213.

<sup>18</sup> *Estate of Brez*, 172 N. Y. 609, 64 N. E. 958.

<sup>19</sup> *Estate of Vanderbilt*, 172 N. Y. 69, 64 N. E. 782. The doctrine of the *Vanderbilt* case has been applied in *Estate of Huber*, 86 App. Div. 458, 83 N. Y. Supp. 769; *In re Burgess*, 146 App. Div. 348, 130 N. Y. Supp. 686.

property transferred in trust payable forthwith. The tax is not required to be paid by the conditional transferee, for, by the provision of the statute it is 'to be paid out of the property transferred.' So that whoever may ultimately take the property takes that which remains after the payment of the tax." In that case the court was dealing only with a contingent remainder, but the principle there announced is necessarily involved in life estates created by trusts.<sup>20</sup>

But even under the amended statute cases have arisen where the courts have not deemed it proper presently to appraise and tax contingent remainders. Thus where a testatrix gave her brother during his life all her personal property, with the right to use so much of the principal as might prove necessary to maintain him, it was decided that a transfer tax should not be assessed against the remainder until the termination of the life estate, since it could not be determined until then how much of the principal would be consumed, and therefore the clear market value of the property transferred to the remainderman could not be ascertained.<sup>21</sup>

In another case it was pointed out that the amendment taxing presently contingent remainders did not repeal the provision taxing transfers effected by the exercise of a power of appointment; and that where

<sup>20</sup> *Estate of Tracy*, 179 N. Y. 501, 72 N. E. 519. Where a testator gave the residue of his property to executors in trust to pay the income to his widow during her widowhood, and on her death to a daughter during her life, and directed that on her death the corpus should be divided among her issue, and that if she died without issue the corpus should be divided amongst his next of kin and heirs, it was held that the tax on the corpus was payable forthwith out of the property transferred: *Estate of Huber*, 86 App. Div. 458, 83 N. Y. Supp. 769. Transfer taxes on the life interests and remainder interests in a trust fund are, according to *Estate of Hoyt*, 44 Misc. Rep. 76, 89 N. Y. Supp. 744, payable out of the capital though the remainders are contingent.

<sup>21</sup> *Matter of Babcock*, 37 Misc. Rep. 445, 75 N. Y. Supp. 926, affirmed, 81 App. Div. 645, 81 N. Y. Supp. 1117.

a life beneficiary was given a power of appointment, the estate in remainder was not taxable until the time arrived for the exercise of the power.<sup>22</sup>

In still another instance where a remainder was limited to children of the life tenant, or her appointees by will, and it did not appear that she had any children, it was held that the remainder was not presently subject to the transfer tax, since no transfer, defeasible or otherwise, had yet been made.<sup>23</sup>

One of the provisions of the New York statute, as amended in 1901, reads: "Estates in expectancy which are contingent or defeasible (and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance) shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited." This language indicates a legislative intention to make the statute retrospective, and accordingly it has been decided that the fact that an appraisal of an estate for the transfer tax was made in 1891 does not entitle the owners of contingent or defeasible estates in expectancy which were created by the will of the decedent, but which did not vest in beneficial enjoyment until 1902, to pay the tax on their shares upon the values as determined in 1891. A new appraisal thereof is necessary. Since 1901 the New York statute has been several times amended.<sup>23a</sup>

<sup>22</sup> *Matter of Howe*, 86 App. Div. 286, 83 N. Y. Supp. 825, affirmed, 176 N. Y. 570, 68 N. E. 1118; *Estate of Burgess* (N. Y.), 97 N. E. 591.

<sup>23</sup> *Matter of Clarke*, 39 Misc. Rep. 73, 78 N. Y. Supp. 869.

<sup>23a</sup> *Estate of Hosack*, 39 Misc. Rep. 130, 78 N. Y. Supp. 983. For other decisions applying the statute as thus amended, see *Estate of*

**§ 94. Future Contingent Estates—Illinois Rule.—**

In Illinois somewhat the same view is taken in taxing future contingent interests as formerly prevailed in New York. To quote from the supreme court: "The tax imposed by section 1 of our statute is fixed upon the 'clear market value of the property received by each person' at the prescribed rate—that is, as shown by the context, the clear market value of the beneficial interest so received. Surely, by such language it was not intended by the legislature that the courts should undertake to ascertain the clear market value of a mere possible interest which, from its very nature, could not have any market value, and which, for all practical purposes, such as taxation, is incapable of valuation. The courts, in order to enforce the immediate collection of such taxes, as the statute seems to contemplate shall be done, cannot change the tax from one on succession to one on property; nor can they classify such remote and contingent interests, and fix the tax or rate of tax upon the whole class, as possibly the law-making power might do or provide for. No other course is left open in the practical administration of the statute than to postpone, as was done in this case, the assessing and collecting of the tax upon such remote and contingent interests as are incapable of valuation and as to which the rate and the exemptions cannot be determined. It is apparent that in many cases the tax on remainders, mentioned in section 2 as becoming immediately due and payable, can be immediately ascertained and collected; but in other cases, while, in contemplation of the statute, they are due and payable and remain a lien on the property, their payment cannot be enforced until the amount can be determined by the happening of the event or the

Connolly, 38 Misc. Rep. 533, 77 N. Y. Supp. 1113; *Estate of Goellet*, 78 N. Y. Supp. 47; *Estate of Naylor*, 120 App. Div. 738, 105 N. Y. Supp. 667, affirmed, 189 N. Y. 556, 82 N. E. 1129.



fulfillment of the conditions upon which the beneficial estate itself is made to depend. This construction of the statute leads to its broadest, fairest and fullest enforcement, while to so construe it as to require the fixing and collecting of the tax, immediately upon the death of the donor, upon all interests in property passing or to pass upon any contingency, would embarrass, and for practical purposes might have the effect to defeat, the full operation the statute was intended to have.”<sup>24</sup>

This doctrine is affirmed by the Illinois court in a subsequent case, where it is decided that if the person ultimately entitled to the beneficial interest in a remainder cannot be identified, or the proportion thereof to which he will succeed cannot be determined, the imposition of the inheritance tax must be postponed until such matters can be definitely understood. The condition contemplated by the statute, observes the court, that will authorize the enforcement of the tax, is one of practical and actual ownership—the possession of the title to something that can be conveyed. The right to succeed, when for all practical purposes a myth, is not subject to taxation, for taxation is intensely real to the taxpayer and should not be levied

<sup>24</sup> *Billings v. People*, 189 Ill. 472, 59 L. R. A. 807, 59 N. E. 798, affirmed in 188 U. S. 97, 47 L. Ed. 400, 23 Sup. Ct. Rep. 272, and approved in *Vanderbilt v. Eidman*, 196 U. S. 480, 49 L. Ed. 563, 25 Sup. Ct. Rep. 331. According to the *Billings* case, the tax on remainders under a will giving specified persons life estates with remainders over in case such person should die leaving no children is not presently payable on the death of the testator, notwithstanding the statute provides that the value of the property shall be immediately appraised, and, after deducting the value of the life estate, the tax on the remainder shall be immediately due and payable, as the reversionary interests are insusceptible of valuation and the literal language of the statute must yield to reasonable interpretation.

It is stated in *Ayers v. Chicago Title etc. Co.*, 187 Ill. 42, 58 N. E. 318, that the tax on a remainder, whether vested or contingent, is due and payable upon the death of the testator, unless the remainderman elects to defer payment by giving bond.

upon that which is unreal. If the estates are contingent, they cannot be taxed until they are vested; if they are now vested, but are subject to an estate for years and moreover subject to defeasance, they cannot be taxed until they become indefeasible; and if they are executory devises, they cannot be taxed until the persons who will sometime be beneficially entitled thereto are ascertained. When the basis of the tax, the rate, and the exemption, if any, cannot be fixed, the tax itself cannot be fixed. No other course is left open, in the practical administration of the statute, than to postpone the assessing and collecting of the tax upon such remote and contingent interests as are incapable of valuation, and as to which the rate and the exemptions cannot be determined. The state will then get the tax when the remainderman gets his property. The right to impose the tax presently depends, not upon the character of the estate devised, with reference to its being a contingent or vested remainder, but upon the question whether the person who is now, or will ultimately be, entitled to a beneficial interest in the remainder can be now identified, and whether the proportion thereof to which he will succeed can be now determined.<sup>25</sup>

In a still later Illinois case on this question the decisions announcing the above doctrine are approvingly cited, and the court, in defining the term "expecta-

<sup>25</sup> *People v. McCormick*, 208 Ill. 437, 64 L. R. A. 775, 70 N. E. 350. According to this case, the inheritance tax cannot be assessed at the death of the testator upon the corpus of the estate when property is devised in trust which shall continue for a period of twenty years, during which time annuities shall be paid to certain persons named, among whom the estate shall be distributed at the expiration of that period if they are alive at that time, and, if they are not alive, among persons whom they shall appoint and certain persons named by the testator, the statute authorizing a tax against the person who "shall become beneficially entitled, in possession or expectation, to any property or income thereof," where the tax rate differs according to the relationship to the testator of the person who ultimately becomes entitled to the property.

tion" as used in the statute, adopts this language from one of the previous cases: "An ordinary vested remainder, not subject to any condition or contingency, as where the property is given to A for life with remainder to B, is, under the statute, immediately taxable as the property of B upon the death of the testator, because there the estate is immediately vested in interest in the remainderman, his heirs and assigns. Nothing can defeat it. B's right is absolute. His deed will transfer the property. An execution against him and sale thereunder will convey it. His death cannot affect it. He is beneficially entitled to it 'in expectation.' This term 'expectation,' as used in our statute, has reference only to possession. The language is, 'by reason whereof any person . . . shall become beneficially entitled, in possession or expectation, to any property or income thereof.' The term 'expectation' is used, not to denote an expectation of becoming vested both with the title and the possession where neither is now vested, but to denote a condition where the title is vested and the possession is deferred. The term 'in expectation' is used in contradistinction to 'in possession.' Both contemplate a title vested and indefeasible, but in one instance the right of enjoyment is immediate, 'in possession'; in the other, it is postponed, 'in expectation.' As used in this statute, these words last quoted refer to the future possession of an estate now vested which is subject to the immediate enjoyment of another."<sup>22</sup>

**§ 95. Future Contingent Estates—Minnesota Rule.**  
The view formerly prevailing in New York has also

<sup>22</sup> Estate of Kingman, 220 Ill. 563, 5 Ann. Cas. 234, 77 N. E. 135. According to this case the value of the estate for years should not be deducted from the value of the remainder and the inheritance tax extended on the balance only, where the will, after it creates a trust for ten years, directs the estate to be divided between the testator's wife and children.

been adopted in Minnesota. To quote from a recent decision by the supreme court of that state: "By the express provisions of the provisos to sections 3 and 15, respectively, a tax upon any devise, bequest, legacy, or gift, which is limited, conditional, dependent, or determinable upon the happening of any contingency or future event, so that the true value thereof cannot be presently ascertained, accrues and becomes payable only when the beneficiary is entitled to the possession or enjoyment thereof. The language of the statute is so specific that its meaning cannot be made clearer by any extended discussion of its terms. In the case of *Estate of Hoffman*,<sup>27</sup> similar provisions of the inheritance tax law of the state of New York were so construed, and it was held that legacies which vested only upon the happening of some uncertain future event, or, if vested, were liable to be divested, were not taxable until the contingencies had passed or been fulfilled and the right to succeed to the property became absolute."<sup>28</sup>

In that case M by his will gave the residue of his estate to trustees to be invested, and directed them to pay semi-annually the net income therefrom to B during the time the estate should remain in their hands, and to pay and deliver the corpus of the estate to him in four equal installments, the first one to be turned over to him when he attained the age of twenty-five years, and the others, in their order, when he reached the age of thirty, thirty-five, and forty years respectively. The will, in the event of B's death before he received the whole or any part of the estate, gave the balance remaining in the hands of the trustees to other legatees. It was held that a tax on a legacy which vests only upon the happening of some

<sup>27</sup> *Estate of Hoffman*, 143 N. Y. 327, 38 N. E. 311.

<sup>28</sup> *State v. Probate Court*, 100 Minn. 192, 110 N. W. 865.

uncertain event, so that the true value thereof cannot be presently ascertained, accrues and becomes payable only when the beneficiary is entitled to the possession or enjoyment thereof; and that the transfer of the residue of the estate to the trustees was not taxable, but a tax would accrue and become payable from time to time on the income and on the corpus as B might become entitled to them or any part thereof.<sup>29</sup>

In a later decision the Minnesota court holds that the tax becomes due and payable when the beneficiary enters into actual possession and enjoyment of any portion of the bequest which exceeds in value the statutory exemption; and that the tax so accruing must be computed upon the value, at the time of the decedent's death, of the right to receive the amount actually paid upon the date of its payment. Says the court, "while we do not find this particular question, namely, the right to assess and collect the tax upon installments, discussed in the decisions of other states to which we have been referred, we think our holding is in harmony with the reasons upon which those decisions are based. . . . Generally speaking, the cases have been with reference to the possibility of valuing an estate to commence in the future and upon the happening of some contingency. We fully agree with the proposition that it is impossible to value an estate so long as it is impossible to say when it will begin or who will be its beneficiary. Thus, in the present case, it would be impossible to say now the value of the entire inheritance which may ultimately go to the sons of the deceased or their heirs; but, upon the other hand, there is no difficulty in arriving at the value of what any one of the beneficiaries has already received."<sup>29a</sup>

<sup>29</sup> State v. Probate Court, 100 Minn. 192, 110 N. W. 865.

<sup>29a</sup> State v. Probate Court, 112 Minn. 279, 128 N. W. 18.

**§ 96. Future Contingent Estates—Pennsylvania Rule.**—The former New York rule has also been approved in Pennsylvania. The supreme court of the latter state adopts this language from the court of appeals of the former state: "It is not to be assumed that the legislature intended to compel the citizen to pay a tax upon an interest he may never receive, and the reasonable construction of this statute leads to no such unjust result. It does not follow because the legislature taxes persons beneficially entitled to property or income, in possession or in expectancy, that a tax was thereby imposed upon an interest that may never vest; until that time arrives the power to tax does not exist." The Pennsylvania court then decides that where a testator leaves his whole estate, including mining leases, to trustees to pay the income to his wife and after her death to various nephews and nieces, and from the terms of the will it cannot be presently ascertained what persons will actually come into possession of the estate upon the death of the widow, nor can the value of the estate at that time be determined, the commonwealth cannot compel any person to enter security to pay the tax, but must wait until the death of the widow, when the tax will be deducted from the shares of the persons then entitled to the estate.<sup>30</sup>

Under the Pennsylvania statute of 1887, the tax on estates in remainders "shall not be payable until the person liable for the same shall come into actual possession of such estate by the termination of the estate for life or years; and the tax shall be assessed

<sup>30</sup> Estate of Coxe, 193 Pa. 100, 44 Atl. 256.

See, also, Appeal of James, 2 Del. Co. Rep. 164; Estate of Willing, 11 Phila. 119; Estate of Wharton, 14 Phila. 279; Estate of Bispham, 6 Pa. Co. Rep. 459; Estate of Van Storch, 7 Pa. Dist. Rep. 204.

The early statutes of Pennsylvania on this question are interpreted in Appeal of Mellon, 114 Pa. 564, 8 Atl. 183; Commonwealth v. Eckert, 53 Pa. 102; Commonwealth v. Smith, 20 Pa. 100.

upon the value of the estate at the time the right of possession accrues to the owner as aforesaid. But the words 'shall not be payable' mean only 'shall not be demandable' by the estate, as the right of the remaindermen to pay sooner is expressly given in the proviso . . . . that the owner shall have the right to pay the tax at any time prior to his coming into possession, and in such cases the tax shall be assessed upon the value of the estate at the time of the payment of the tax, after deducting the value of the life estate or estates for years." And it has been held that where a testator directs his executors to pay "all the collateral inheritance tax on all the devises, bequests and legacies contained in this will as soon after my decease as the same can be conveniently done," and the executors pay the tax on the entire estate at its then value, the commonwealth cannot, after the death of the life tenant and after the estate has increased in value, impose any tax upon the remaindermen; and that where the executor has paid the tax on the whole estate passing in possession or remainder, no appraisal need be made of the value of the life estate and the remainders.<sup>21</sup>

It has also been affirmed in Pennsylvania that where the real estate of a decedent passes under the intestate laws to his parents for life, who are exempt from inheritance taxation, and at their death goes to collateral heirs, the commonwealth is entitled to the collateral inheritance tax upon the appraised value of the realty less the amount of the decedent's debts unpaid by his personal estate. It is apparent, the court remarks, that in estates liable to the collateral tax the state is entitled to a tax on the entire estate; that when the tenant for life or for years, being parent or lineal descendant, is exempt from liability, the whole

<sup>21</sup> *Estate of De Borbon*, 211 Pa. 623, 61 Atl. 244.

tax on the entire estate must be paid by the tenants in remainder; that in such cases the time of payment is postponed until the estate comes into actual possession of the tenant liable; that nevertheless if such tenant elect in anticipation to pay at the death of the decedent, the tax is assessable on the then valuation of the entire estate, less the value of the estate for life or years; that is, when the tenant of the intermediate estate is not liable, the tenant in remainder has the election either to pay the tax on the entire estate with interest, when he comes into actual possession, or to pay at the death of the decedent the tax on the then net valuation of the estate in remainder; and in consideration of such anticipated payment, her right to a tax on the intermediate estate is waived by the commonwealth.<sup>22</sup>

**§ 97. Future Contingent Estates—Wisconsin Rule.** In Wisconsin, where the fair market value of estates or interests therein which are limited, conditioned, dependent, or determinable upon the happening of any contingency or future event, and cannot by reason thereof be ascertained at the time of the transfer, the tax becomes due and payable when the beneficiary shall come into the actual possession and enjoyment thereof. This does not operate to postpone the imposition of the tax on the transfer beyond the time of the death of the transferrer, for the tax comes into existence at the time of his death and remains a lien on the property until paid; but since the fair market value thereof is not then ascertainable, it operates to postpone payment to the time when such value is ascertainable, namely, when the contingency happens which gives the beneficiary the actual possession or enjoyment of the property. An objection to this rule has been raised on the ground

<sup>22</sup> Commonwealth's Appeal, 127 Pa. 438, 17 Atl. 1094.



that it imposes a tax on transfers limited to death on contingencies which may never happen, to persons not in being or ascertainable, or on transfers of defeasible estates which may never go to the persons who are taxed. But this objection is without merit, for, although the tax is imposed at the time of the devolution of the property, which is at the time of the transferrer's death, the law does not enforce assessment and payment of the tax on interests or estates not vested or on those whose value cannot be ascertained by reason of uncertainties and contingencies. Payment of a tax on such transfers is postponed until the beneficiary comes into the actual possession or enjoyment thereof. And if present owners of defeasible estates are required to pay the tax on the whole transfer, provision is made for reimbursing them should it happen that such estates should be abridged, defeated or diminished."

**§ 98. Future Contingent Estates—Tennessee Rule.** Under the Tennessee statute the collateral inheritance tax does not become collectible, in the case of contingent remainders, until the person liable therefor comes into the possession and beneficial enjoyment of the property after the termination of the life estate, and then the tax is assessed upon the value at the time the right of possession accrues to the owner, provided that he may pay before coming into possession upon a valuation at that time, deducting the value of the life estate. The termination, however, of the estate for life is not necessarily postponed to the death of the life tenant; the life estate is terminated where the estate in remainder is conveyed to the life tenant, and the tax then becomes due. And the life tenant is liable for the payment of the tax, since by virtue of the convey-

<sup>23</sup> *State v. Pabst*, 139 Wis. 561, 121 N. W. 351.

ance there is a merger of the two estates in a fee as to which he at once comes into the actual ownership, possession and beneficial enjoyment."<sup>24</sup>

**§ 99. Future Contingent Interests—Massachusetts Rule.**—Collateral legacies of future and contingent interests are taxable under the Massachusetts statute; and the tax is to be paid when the contingency occurs, and the determination of the value of the future interest is to be postponed until the happening of the event. It is then valued as of the time of the death of the testator.<sup>25</sup> The Massachusetts statute of 1902, providing that in all cases where there has been or shall be a devise, bequest, or descent liable to the collateral inheritance tax, to come into actual enjoyment after the expiration of one or more life estates or a term of years, the tax on such property shall not be payable until the persons entitled thereto shall come into actual possession of the property, and the tax shall be assessed upon the value of the property at the time when the right of possession accrues to the persons entitled thereto, and they shall pay the tax upon coming into possession—is retrospective, not merely prospective, as to all estates where the tax has not been paid; and it follows the suggestion of Justice Field, made while construing a prior law, that "perhaps a simpler way than that prescribed by statute would have been to levy the tax at the end of

<sup>24</sup> *Harrison v. Johnston*, 109 Tenn. 245, 70 S. W. 414. See, also, *Bailey v. Drane*, 96 Tenn. 16, 33 S. W. 573.

<sup>25</sup> *Howe v. Howe*, 179 Mass. 546, 55 L. R. A. 626, 61 N. E. 225. The provisions of the Massachusetts statute that the collateral succession tax on property passing after the expiration of a life estate shall not be payable until the person entitled thereto shall come into actual possession, etc., is considered in *Dow v. Abbott*, 197 Mass. 283, 84 N. E. 96.

The constitutionality of the Massachusetts statute is upheld in *Attorney General v. Stone*, 209 Mass. 186, 95 N. E. 395.

the life estate upon the whole of the fund to be paid to the legatee in remainder.”<sup>26</sup>

The Massachusetts court has pointed out that an interest in property passes by will, within the meaning of the inheritance tax, although its destination is, by the will, made subject to the appointment of third persons.<sup>27</sup>

**§ 100. Future Contingent Estates—United States Rule.**—The supreme court of the United States, in construing the war revenue act of 1898 in its application to contingent future estates, has adopted the view taken in the Illinois and the earlier New York decisions, to the effect that on such estates the inheritance tax is postponed to the time when the beneficial owner comes into the possession or enjoyment of the property; and has decided that the interest of a residuary legatee, conditioned on his reaching a specified age, could not be deemed taxable before the happening of the contingency. Said Justice White: “In view of the express provisions of the statute as to possession or enjoyment and beneficial interests and clear value, and of the absence of any express language exhibiting an intention to tax a mere technically vested interest in a case where the right to possession or enjoyment was subordinated to an uncertain contingency, it would, we think, be doing violence to the statute to construe it as taxing such an interest before the period when possession or enjoyment had attached. And such is the construction which has been affixed to some state statutes, the text of which lent themselves more strongly to the construction that it was the intention to subject to immediate taxation merely technical interests, without regard to a present right

<sup>26</sup> *Stevens v. Bradford*, 185 Mass. 439, 70 N. E. 425.

<sup>27</sup> *Howe v. Howe*, 179 Mass. 546, 55 L. R. A. 626, 61 N. E. 225.

to possess or enjoy.”<sup>22</sup> It will be noticed that Justice White, in speaking of “technically vested” interests, was addressing attention to estates not vested in fact, but which the law, for purposes of convenience, treats as vested.<sup>23</sup>

**§ 101. Person or Fund Liable for Tax.**—It has already been seen, under the New York statute of 1899 and 1900, that transfer taxes imposed upon trust estates and estates for life and in remainder, created by will, are payable forthwith out of the property

<sup>22</sup> *Vanderbilt v. Eidman*, 196 U. S. 480, 49 L. Ed. 563, 25 Sup. Ct. Rep. 331, citing *In re Curtis*, 142 N. Y. 219, 36 N. E. 887; *In re Roosevelt*, 143 N. Y. 120, 25 L. R. A. 695, 38 N. E. 281; *In re Hoffman*, 143 N. Y. 327, 38 N. E. 311; *Billings v. People*, 189 Ill. 472, 59 L. R. A. 807, 59 N. E. 798; *Howe v. Howe*, 179 Mass. 546, 55 L. R. A. 626, 61 N. E. 225.

The doctrine of the above *Vanderbilt* case has been applied in *Land Trust etc. Co. v. McCoach*, 129 Fed. 901, 64 C. C. A. 333; *Philadelphia Trust etc. Co. v. McCoach*, 129 Fed. 906, 64 C. C. A. 338; *Herold v. Shanley*, 146 Fed. 20, 76 C. C. A. 478; *Disston v. McClain*, 147 Fed. 114, 77 C. C. A. 340; *Union Trust Co. v. Lynch*, 148 Fed. 49, affirmed, 164 Fed. 161, 90 C. C. A. 147; *Westhus v. Union Trust Co.*, 164 Fed. 795, 90 C. C. A. 441; *Farrell v. United States*, 167 Fed. 639; *Chouteau v. Allen*, 170 Fed. 412, 95 C. C. A. 582.

The *Vanderbilt* case has recently been distinguished in *United States v. Fidelity Trust Co.*, 222 U. S. 158, 56 L. Ed. —, 32 Sup. Ct. Rep. 59.

In *Heberton v. McLain*, 135 Fed. 226, it is decided that a legacy to a daughter “when she is eighteen years old” is contingent, and not subject to a legacy tax under section 29 of the war revenue act.

This act, as amended in 1902 and 1907, provides that no tax shall thereafter be assessed or imposed on any contingent beneficial interest which shall not have become absolutely vested in possession or enjoyment prior to July 1, 1902.

For decisions construing former United States revenue acts in their application to contingent future interests, see *Clapp v. Mason*, 94 U. S. 589, 24 L. Ed. 212; *Wright v. Blakeslee*, 101 U. S. 174, 25 L. Ed. 1048; *Mason v. Sargent*, 104 U. S. 689, 26 L. Ed. 894; *United States v. Hazard*, 8 Fed. 380.

<sup>23</sup> *Title Guarantee & Trust Co. v. Ward*, 164 Fed. 459, 465, affirmed, 184 Fed. 447.

transferred."<sup>40</sup> Since both life tenant and remainderman take as a matter of sovereign favor, neither can complain of this manner of payment. The life tenant cannot oppose the tax because the principal of which he is entitled to the use is thereby diminished, nor can the remainderman resist the tax on the ground that he may never come into the possession of the property.<sup>41</sup>

But this rule prescribed by the legislature that the tax is payable forthwith out of the corpus of the property is not in accord with the rule formulated by the courts in the absence of express legislative mandate, for they have affirmed that where a testator has given the income of a fund for life, and the principal over at the death of the life tenant, two estates are thereby created and each beneficiary must pay his tax. The tax of the life tenant is payable out of the income, and is not chargeable against the principal of the fund, which is thereby kept intact for the benefit of the remaindermen, who are liable for the tax on the remainder interests.<sup>42</sup>

<sup>40</sup> *Estate of Vanderbilt*, 172 N. Y. 69, 64 N. E. 782; *Estate of Tracy*, 179 N. Y. 501, 72 N. E. 519; *Estate of Bass*, 57 Misc. Rep. 531, 109 N. Y. Supp. 1084; *Estate of Wilcox*, 118 N. Y. Supp. 254.

<sup>41</sup> *Estate of Bushnell*, 172 N. Y. 649, 65 N. E. 1115.

<sup>42</sup> *In re Johnson*, 6 Dem. Sur. 146; *Estate of Clarke*, 5 N. Y. Supp. 199; *In re Hoyt*, 37 Misc. Rep. 720, 76 N. Y. Supp. 504; *Estate of McMahon*, 28 Misc. Rep. 697, 60 N. Y. Supp. 64; *Estate of Hoyt*, 37 Misc. Rep. 720, 76 N. Y. Supp. 504; *Estate of Christian*, 18 Wkly. Notes Cas. (Pa.) 88; *Fitzgerald v. Rhode Island Hospital Trust Co.*, 24 R. I. 59, 52 Atl. 814. In this last case the question is thoroughly considered. In this connection, see, also, section 90, ante.

Under a will giving a life estate to the widow of the testator, with remainder to his daughter, the daughter takes through the will, not through the life tenant; and if the transfer tax has been paid on the testator's estate, no further tax can be collected on the falling of the remainder: *Estate of Whitney*, 69 Misc. Rep. 131, 124 N. Y. Supp. 909.

According to *Estate of Brown*, 203 Pa. 161, 57 Atl. 360, where the corpus of an estate is committed to the executors in trust to collect the income, "and after taking any and all necessary expenses, to divide the said net income in equal shares among" designated persons named for

**§ 102. Amount of Tax on Contingent Remainder.—**

In determining the amount of the inheritance tax on contingent remainders, the court should take the highest amount that in any contingency would become liable to the tax.<sup>43</sup> The tax becomes due and payable, it has recently been decided in Minnesota, when the beneficiary enters into actual possession and enjoyment of any portion of the bequest which exceeds the statutory exemption, that is, the tax may be assessed and collected on installments; and the tax so accruing must be computed upon the value, at the time of the decedent's death, of the right to receive the amount actually paid upon the date of its payment.<sup>44</sup>

**§ 103. Law Governing Tax—Retrospective Statute.**

The question which law, in point of time, governs the

life, the collateral inheritance tax, New York state transfer tax, and United States war tax are not payable out of the principal of the estate, but are to be deducted by the trustees from the gross income, after which the net income is to be divided in equal shares among the life tenants.

<sup>43</sup> *People v. Byrd*, 253 Ill. 223, 97 N. E. 293. Said the court in this case: "A possible contingency here is that three of the four devisees named may die before the widow, leaving no issue. In that contingency the one survivor would receive all of the estate, for the reason such one would be the only representative of the class living at the time the estate vests. The court below did not adopt this rule, but supposed the possible contingency that two of the children named should die without issue before the widow, leaving two survivors of the class to take the estate. The court then divided the devise equally between the two supposed survivors and deducted twenty thousand dollars from each share to arrive at the amount of tax due. Under the rule requiring the court to adopt the highest amount that in any contingency can pass, the amount here was subject to only one deduction of twenty thousand dollars. No case involving the construction of the inheritance tax law in this regard has heretofore come before this court, but our statute in this respect is identical with the statute of New York. Section 230 of the New York statute (Consol. Laws 1909, c. 60) has been construed by the court of appeals of New York in accordance with the views herein expressed: In the *Matter of Vanderbilt*, 172 N. Y. 69, 64 N. E. 782; In the *Matter of Brex*, 172 N. Y. 609, 64 N. E. 958."

<sup>44</sup> *State v. Probate Court*, 112 Minn. 279, 128 N. W. 18.

imposition of inheritance taxes on the transfer of remainders is one on which the authorities are somewhat at variance. Some courts take the view that the law in force at the time of the death of the donor determines whether the remaindermen are liable for any tax, and, if they are, the extent of the liability; and, moreover, that after a remainder has vested free from taxation upon his death, the legislature cannot, without offending constitutional principles, impose a tax to take effect when the remaindermen come into possession or enjoyment of their estate. Other courts, however, take the view that the privilege of succession is not fully exercised until the life estate is terminated and the remainderman comes into the possession or enjoyment of the property; and that until that time arrives it is competent for the legislature to change the procedure so that perhaps the tax is made more burdensome than it would have been under the law in force at the time of the donor's death, or even, perhaps, to impose a tax where none at all existed at the time of such death.<sup>45</sup>

<sup>45</sup> See sec. 39, ante.

## CHAPTER VII.

TRANSFERS IN CONTEMPLATION OF OR TO TAKE  
EFFECT UPON DEATH.

- § 110. Constitutionality of Statutes Imposing Tax.
- § 111. Purpose of Statutes.
- § 112. Intention of Donor or Grantor.
- § 113. Consideration for Transfer, in General.
- § 114. Consideration of Support of Grantor or Others.
- § 115. Consideration of Services.
- § 116. Situs of Property—Nonresidence.
- § 117. Transfers in Contemplation of Death, in General.
- § 118. Transfers in Contemplation of Death—Illustrations.
- § 119. Determination of Taxability of Transfer.
- § 120. Gifts Inter Vivos or Causa Mortis.
- § 121. Transfers to Take Effect at Death.
- § 122. Marriage Settlements.
- § 123. Agreements to Make Will.
- § 124. Transfers in Trust, in General.
- § 125. Trusts—Reservation of Power to Revoke.
- § 126. Trusts—Income Payable to Transferees.

§ 110. **Constitutionality of Statutes Imposing Tax.** Inheritance tax statutes are ordinarily not confined to transfers of property by will or by the intestate laws, but also embrace transfers made in contemplation of the death of the transferrer or intended to take effect in possession or enjoyment at or after his death. The constitutionality of this form of taxation has been assailed on the ground that the classification singling out such transfers for taxation is unreasonable and that the tax in some cases reaches gifts inter vivos. These constitutional objections, however, have been urged in vain.<sup>1</sup> In upholding the constitutionality of

<sup>1</sup> Estate of Benton, 234 Ill. 366, 14 Ann. Cas. 107, 18 L. R. A., N. S., 458, 84 N. E. 1026; Estate of Keeney, 194 N. Y. 281, 87 N. E. 428; Appeal of Wright, 38 Pa. 507; State v. Alston, 94 Tenn. 674, 28 L. R. A. 178, 30 S. W. 750.

"We think that there are sufficient reasons," to quote from Estate of Keeney, 194 N. Y. 281, 87 N. E. 428, affirmed, Keeney v. New York, 222



the Massachusetts law the supreme court of that state observed: "We see no difference in principle between property passing by a deed intended to take effect in possession or enjoyment on the death of the grantor and property passing by will. In either case it is the privilege of disposing of property after the death of the grantor or testator and of succeeding to it which is taxed, though the amount of the tax is determined by the value of the property. The constitutionality of the law in regard to taxing property passing by will was fully considered in *Minot v. Winthrop*,<sup>2</sup> and that case, we think, is decisive of this."<sup>3</sup>

Transfers to take effect in possession or enjoyment after the death of the transferrer are sometimes made with the design of evading the inheritance tax. But aside from any evasion of the law, the taxation of such transfers may be placed on the ground that the property remains substantially that of the transferrer during his lifetime, and does not actually pass to the beneficiaries until his death, and hence the transmission

U. S. 525, 56 L. Ed. —, 32 Sup. Ct. Rep. 105, "to support the classification made by the statute; at least that the classification cannot be said to be devoid of reasonable ground on which to rest. Inheritance tax laws have been very generally adopted throughout the states of the Union. A substantial part of the revenue necessary to support their governments is now derived from that source. A not wholly unnatural desire exists among owners of property to avoid the imposition of inheritance taxes upon the estates they may leave, so that such estates may pass to the objects of their bounty unimpaired. It is a matter of common knowledge that for this purpose trusts or other conveyances are made whereby the grantor reserves to himself the beneficial enjoyment of his estate during life. Were it not for the provision of the statute which is challenged, it is clear that in many cases the estate on the death of the grantor would pass free from tax to the same persons who would take it had the grantor made a will or died intestate. It is true that an ingenious mind may devise other means of avoiding an inheritance tax, but the one commonly used is a transfer with reservation of a life estate. We think this fact justified the legislature in singling out this class of transfers as subject to a special tax."

<sup>2</sup> *Minot v. Winthrop*, 162 Mass. 113, 26 L. R. A. 259, 38 N. E. 512.

<sup>3</sup> *Crocker v. Shaw*, 174 Mass. 266, 54 N. E. 549.

is essentially similar in that respect to a devolution by testacy or intestacy upon the death of the owner.<sup>4</sup>

§ 111. **Purpose of Statutes.**—Without a statute taxing transfers made in contemplation of death or to take effect thereon, it is very clear that many estates would pass free from taxation to the same persons to whom they would have passed had the grantor or donor made a will or died intestate, for it is not an entirely unnatural desire, and certainly not one infrequently indulged, for property owners to attempt to evade the inheritance tax and transmit estates to the objects of their bounty unimpaired; and even though the transfer is not actuated by any such motive, its practical effect, so far as the public revenue is concerned, is the same. It is the purpose of such statutes to preclude, so far as possible, this evasion of taxation, whether with fraudulent intent or not, and to secure to the state its revenue on all transfers which have their occasion in the death of the transferer; but it is not the purpose of the statute to inhibit ordinary transfers, by gift or otherwise, if not made in contemplation of death or not postponed in enjoyment or possession until after the death of the donor or grantor.<sup>5</sup>

The policy of the law is, that the owner of property shall not defeat or evade the tax by any form of transfer or conveyance, where after death the income, profit or enjoyment inures to the benefit of persons not exempted by the statute.<sup>6</sup>

<sup>4</sup> *Estate of Lines*, 155 Pa. 378, 26 Atl. 728.

<sup>5</sup> *People v. Kelley*, 218 Ill. 509, 75 N. E. 1038; *Estate of Keeney*, 194 N. Y. 281, 87 N. E. 428; *Estate of Thorne*, 44 App. Div. 8, 60 N. Y. Supp. 419; *Estate of Spaulding*, 49 App. Div. 541, 63 N. Y. Supp. 694, order affirmed in 163 N. Y. 607, 57 N. E. 1124; *Estate of Brandreth*, 58 App. Div. 575, 69 N. Y. Supp. 142; *Estate of Cornell*, 66 App. Div. 162, 73 N. Y. Supp. 32, order modified in 170 N. Y. 423, 63 N. E. 445.

<sup>6</sup> *State Street Trust Co. v. Stevens*, 209 Mass. 373, 95 N. E. 851.

§ 112. **Intention of Donor or Grantor.**—It is not necessary, in order that a transfer in contemplation of death be liable to the inheritance tax, that it should be made with fraudulent intent to evade taxation; it is enough that the gift is made in contemplation of death.<sup>7</sup> But the fact that a conveyance is made with the intention of evading the tax does not defeat the tax nor invalidate the transfer, as the fund or property is liable to taxation in the possession of the grantee or donee. The intention to evade may be apparent in the instrument of transfer, or it may be found when all the circumstances attending the transaction are disclosed.<sup>8</sup>

The intention to retain the enjoyment of property conveyed by a deed to take effect after the death of the grantor need not be expressed in writing. If real property is conveyed with a parol agreement or understanding that the grantor shall retain the right of possession and enjoyment of the whole or some part thereof during his life, it is, after his death, subject to the inheritance tax to the extent of the part so retained.<sup>9</sup>

§ 113. **Consideration for Transfer, in General.**—While the statutes of the various states, as well as the congressional act of 1898, taxing transfers made in contemplation of death or to take effect thereupon, ordinarily refer to the transfer as by “deed, grant, sale or gift,” it seems to be conceded that only such transfers are contemplated as are voluntary or gifts proper, and that transfers for a valuable consideration are not subject to the tax imposed.<sup>10</sup> Said the

<sup>7</sup> *Rosenthal v. People*, 211 Ill. 306, 71 N. E. 1121.

<sup>8</sup> *State Street Trust Co. v. Stevens*, 209 Mass. 373, 95 N. E. 851.

<sup>9</sup> *People v. Moir*, 207 Ill. 180, 99 Am. St. Rep. 205, 69 N. E. 905.

<sup>10</sup> *Estate of Hess*, 110 App. Div. 476, 96 N. Y. Supp. 990, affirmed, 187 N. Y. 554, 80 N. E. 1111.

court in *Hagerty v. State*,<sup>11</sup> "The meaning of the word 'sale,' as used in the statute, is to be determined by the maxim '*noscitur a sociis*,' and it includes only transmissions which, though in form sales, are in fact gifts"; and in *Estate of Birdsall*:<sup>12</sup> "It is very evident that the word 'deed,' as used in this act, has no reference to a conveyance of property by such an instrument made in the ordinary course of business for a valuable consideration, but is confined to conveyances of real property intended as gifts"; and in *Estate of Miller*:<sup>13</sup> "I do not consider that the statute has reference to transfers made upon a valuable consideration, but that it relates merely to voluntary transfers without consideration, for the tax is not one upon property, but upon the right of succession. A payment of an obligation dependent upon a valuable consideration is not a succession in any sense"; and in *Blair v. Herold*:<sup>14</sup> "I feel justified, therefore, in holding that the words 'deed, grant, bargain, sale or gift,' as used, referred, each and all of them, to transfers without consideration, and operative by way of gift."

**§ 114. Consideration of Support of Grantor or Others.**—This question has arisen where property has been conveyed in consideration of the support of the grantor by the grantees during his life. In such cases, if a present title is conveyed, if the property passes in possession and enjoyment as of the date of the conveyance, no intention to evade the tax appearing, the transfer is not taxable as having been made in contemplation of death or to take effect at or after

<sup>11</sup> *Hagerty v. State*, 55 Ohio St. 613, 45 N. E. 1046.

<sup>12</sup> *Estate of Birdsall*, 22 Misc. Rep. 180, 49 N. Y. Supp. 450.

<sup>13</sup> *Estate of Miller*, 77 App. Div. 473, 78 N. Y. Supp. 930.

<sup>14</sup> *Blair v. Herold*, 150 Fed. 199.

death;<sup>16</sup> and this although the deed is withheld from record until the grantor's death.<sup>16</sup>

Where a man conveys property to third persons in consideration of their agreement to care for his deaf and dumb daughter during her life, he being well advanced in years and supposing that she will survive him, which in fact she does not, the property cannot, on his death, be subjected to the inheritance tax, for the impelling motive for the transfer is not the contemplation of death, but the desire to provide for the daughter's future, and besides the conveyance is based upon a valuable consideration.<sup>17</sup>

**§ 115. Consideration of Services.**—Under the Massachusetts statute, where the transfer is "a bona fide purchase for full consideration in money or money's worth," a tax cannot be levied. But the consideration, whether it be money or the equivalent of money, must be full, else the transfer is not exempt. If services rendered, or to be rendered, constitute the consideration, their value may be inquired into and ascertained, and where, in "money's worth," they equal or exceed the fair value of the property at the death of the transferrer, no tax can be levied; but if they fall below that value, there is no provision for

<sup>16</sup> *Lamb's Estate v. Morrow*, 140 Iowa, 89, 18 L. R. A., N. E., 226, 117 N. W. 1118; *Estate of Hess*, 110 App. Div. 476, 96 N. Y. Supp. 990, affirmed, 187 N. Y. 554, 80 N. E. 1111; *In re Hulse*, 15 N. Y. Supp. 770; *In re Thorne*, 44 App. Div. 8, 60 N. Y. Supp. 419, appeal dismissed, 162 N. Y. 238, 56 N. E. 625.

Where the principal part of an estate was conveyed to the grantor's cousin, on the latter's promise to give the grantor certain care and execute to her, free of rent, a life lease of the property, and the lease was executed on the same day of the conveyance, the transaction had the appearance of an attempted evasion of the transfer tax law, and the transfer was held taxable: *Estate of Dobson*, 132 N. Y. Supp. 472.

<sup>16</sup> *Estate of McCormick*, 15 Pa. Co. Ct. 621.

<sup>17</sup> *People v. Burkhalter*, 247 Ill. 600, 139 Am. St. Rep. 351, 93 N. E. 379.

a reduction, leaving the excess only to be taxed as a gratuity.<sup>18</sup>

**§ 116. Situs of Property—Nonresidence.**—Where the beneficiaries of a transfer of property within the state by a resident, by a gift intended to take effect in possession or enjoyment at or after his death, take the property in possession or enjoyment under the laws of the state, and under an instrument there made, it is not important, so far as concerns the application of the inheritance tax statute, whether they reside in the state or elsewhere at the time of the imposition of the tax.<sup>19</sup> And a transfer by a resident of the state of stocks, bonds and securities in trust is subject to the inheritance tax, as made to take effect at or after the death of the transferrer, notwithstanding the possession and legal title of the property at the time of his death are in nonresident trustees without the state.<sup>20</sup>

**§ 117. Transfers in Contemplation of Death, in General.**—The meaning of the words “in contemplation of death,” as here used, must be inferred and ascertained from the context of the statute and the object or purpose of the law. Looking in that direction for their proper interpretation, it becomes obvious that they are intended to cover transfers of persons who are prompted to act by reason of the expectation of death and who thereby accomplish transmissions of property in the nature of testamentary dispositions. The words do not refer to that general expectation commonly entertained by all persons, but rather to that apprehension which arises from some existing condi-

<sup>18</sup> *State Street Trust Co. v. Stevens*, 209 Mass. 373, 95 N. E. 851.

<sup>19</sup> *Estate of Green*, 153 N. Y. 223, 47 N. E. 292.

<sup>20</sup> *Estate of Keeney*, 194 N. Y. 281, 87 N. E. 428, affirmed, *Keeney v. New York*, 222 U. S. 525, 56 L. Ed. —, 32 Sup. Ct. Rep. 105; *In re Douglas County*, 84 Neb. 506, 121 N. W. 593; *Estate of Bullen*, 143 Wis. 512, 139 Am. St. Rep. 1114, 128 N. W. 109.

tion of body or some impending peril. They refer to an expectation of death which arises from such a bodily or mental condition as prompts persons to dispose of their property and bestow it on those whom they regard as entitled to their bounty. This accords with the general purposes of the law, namely, the imposition of a tax on the devolution of property involved in the demise of the owner.<sup>21</sup> "A gift is made in contemplation of an event when it is made in expectation of that event, and having it in view; and a gift made when the donor is looking forward to his death as impending, and in view of that event, is within the language of the statute."<sup>22</sup>

The contemplation of death must be the impelling motive, without which the conveyance would not be made, in order to subject the transfer of property to the inheritance tax. An owner may give away or otherwise dispose of his property, or any part of it, in any manner he sees fit; and if such disposition takes effect, in possession and enjoyment, during his lifetime, it will not be taxable unless made in contemplation of his death. But if the actual intention of the parties to a deed is, that possession or enjoyment of the property shall be postponed until after the death of the grantor, the transfer will be subject to the inheritance tax, though such intention is not evidenced in writing. So will an absolute gift, although followed by possession and enjoyment of the property in the grantor's lifetime, if the gift was made by him in contemplation of his death, and this regardless of any intent to evade the payment of the tax.<sup>23</sup>

<sup>21</sup> *Estate of Baker*, 83 App. Div. 530, 82 N. Y. Supp. 390, affirmed, 178 N. Y. 575, 70 N. E. 1049; *State v. Pabst*, 139 Wis. 569, 121 N. W. 351.

<sup>22</sup> *Estate of Benton*, 234 Ill. 366, 14 Ann. Cas. 107, 18 L. R. A., N. S., 458, 84 N. E. 1026.

<sup>23</sup> *People v. Burkhalter*, 247 Ill. 600, 139 Am. St. Rep. 351, 93 N. E. 379; *Bailey v. Henry* (Tenn.), 143 S. W. 1124, discussing the rule of

The words "contemplation of death," as defined in section 27 of the California statute, "shall be taken to include that expectancy of death which actuates the mind of a person on the execution of his will, and in no wise shall said words be limited and restricted to that expectancy of death which actuates the mind of a person in making a gift causa mortis; and it is hereby declared to be the intent and purpose of this act to tax any and all transfers which are made in lieu of or to avoid the passing of the property transferred by testate or intestate laws."

**§ 118. Transfers in Contemplation of Death—Illustrations.**—The following gifts have been held in contemplation of death, and hence subject to inheritance taxation: A gift of corporate stock by a sick man a month or two before death;<sup>24</sup> a conveyance without consideration three days before the grantor submitted to a contemplated surgical operation from which he died;<sup>25</sup> a gift by a father to his daughters of corporate stock, accompanied by the execution by the daughters to him of an irrevocable power of attorney to vote the stock and receive dividends thereon during his life.<sup>26</sup>

The following transfers have been held not taxable as transfers made in contemplation of death: An assignment of corporate stock by a husband to his wife three years prior to his death, he having no reason to expect immediate dissolution at the time of the transfer and being able for some time thereafter to attend to his duties and business;<sup>27</sup> an assignment of stock by a man to his wife three weeks before his

the Tennessee statute that a tax is enforceable only where the decedent was "seised" or "possessed" of the estate at the time of his death.

<sup>24</sup> *Rosenthal v. People*, 211 Ill. 306, 71 N. E. 1121; *Estate of Benton*, 234 Ill. 366, 14 Ann. Cas. 107, 18 L. R. A., N. S., 458, 84 N. E. 1026.

<sup>25</sup> *Merrifield's Estate v. People*, 212 Ill. 400, 72 N. E. 446.

<sup>26</sup> *Estate of Brandreth*, 28 Misc. Rep. 468, 59 N. Y. Supp. 1092.

<sup>27</sup> *Estate of Graves*, 52 Misc. Rep. 433, 103 N. Y. Supp. 571.



death, he being sick abed at the time and having been told by his physician that he should take a long vacation after recovery.<sup>28</sup> The soundness of this decision, however, is not free from doubt. Justice Jenks dissented. In writing the prevailing opinion, Justice Woodward stated that the fact that the assignor of the stock died within about three weeks of the assignment, and of the illness with which he was afflicted at the time, had no bearing on the question. "The only point to be determined is whether the transfer was made in the then belief that he was not going to get well; that it was made in contemplation of his impending death, and for the purpose of defrauding the state of the transfer tax; for that is the essence of the matter, and there is no presumption that a man intends to commit a fraud of any kind."

**§ 119. Determination of Taxability of Transfer.**—Whether or not a gift is made in contemplation of death, so as to be subject to the inheritance tax, is a question of fact.<sup>29</sup>

A contention that a conveyance of real property was made in contemplation of death should not be passed upon without notice to the grantee, against whom the tax must be assessed, if at all.<sup>30</sup>

<sup>28</sup> Estate of Mahlstedt, 67 App. Div. 176, 73 N. Y. Supp. 818.

<sup>29</sup> People v. Kelley, 218 Ill. 509, 75 N. E. 1038; Estate of Benton, 234 Ill. 366, 14 Ann. Cas. 107, 18 L. R. A., N. S., 458, 84 N. E. 1026. A question of fact, which the court of appeals cannot review, is involved on an appeal from an order of the appellate division reversing, "upon the facts and the law," the surrogate's decree confirming the report of an appraiser levying a tax, where the surrogate rejected and the appellate division accepted the version of the beneficiary's story most favorable to herself: Estate of Thorne, 162 N. Y. 238, 56 N. E. 625.

In Estate of Crary, 31 Misc. Rep. 72, 64 N. Y. Supp. 566, it is affirmed that the finding of an appraiser, after full and fair investigation, that a transfer two months before death was not taxable, would not be disturbed on appeal.

<sup>30</sup> Estate of Wood, 40 Misc. Rep. 155, 81 N. Y. Supp. 511.

§ 120. **Gifts Inter Vivos or Causa Mortis.**—The New York courts, following the dictum in *Estate of Seaman*,<sup>81</sup> have in a number of cases announced that gifts in contemplation of death, within the meaning of the inheritance tax laws, refer only to gifts causa mortis, and do not embrace, unless the transfer is made with intent to evade the law, gifts inter vivos made in contemplation of death.<sup>82</sup> But this error has been repudiated, especially in the later New York decisions, and “gifts in contemplation of death” have been given a more comprehensive meaning, and not restricted to donations technically known as causa mortis.<sup>83</sup> “It would therefore appear,” to quote from a recent decision, “that in determining whether the gift was made in contemplation of death, the courts should not be restricted to those cases where the circumstances (such as that the gift was made when the donor was in extremis, or was dangerously ill, or in danger of immediate death, or afflicted with an acute disease) would indicate the existence of those conditions necessarily requisite to the validity of a gift causa mortis, but rather that the facts and circumstances surrounding the making of the gift be taken into consideration and a determination arrived at as to whether such facts and circumstances indicate that the gift was made while the donor contemplated the probability of his own death in the immediate future, or whether

<sup>81</sup> *Estate of Seaman*, 147 N. Y. 69, 41 N. E. 401.

<sup>82</sup> *Estate of Spaulding*, 22 Misc. Rep. 420, 50 N. Y. Supp. 398; *Estate of Edgerton*, 35 App. Div. 125, 54 N. Y. Supp. 700, judgment affirmed in 158 N. Y. 671, 52 N. E. 1124; *Estate of Cornell*, 66 App. Div. 162, 73 N. Y. Supp. 32, order modified in 170 N. Y. 423, 63 N. E. 445; *Estate of Bullard*, 76 App. Div. 207, 78 N. Y. Supp. 491.

<sup>83</sup> *Estate of Birdsall*, 22 Misc. Rep. 180, 49 N. Y. Supp. 450; *Estate of Harbeck*, 43 App. Div. 188, 59 N. Y. Supp. 362; *Estate of Palmer*, 117 App. Div. 360, 102 N. Y. Supp. 236.

or not the imminence of the donor's death was in any substantial sense a direct cause of such gift." <sup>84</sup>

The Illinois courts have from the first declined to restrict "gifts in contemplation of death" to gifts causa mortis, but have held subject to inheritance taxation all gifts made in contemplation of death, whether or not they are such as are technically styled gifts causa mortis. <sup>85</sup> The same is true of the Wisconsin court. Said Justice Siebecker: "The claim that the words can include only gifts causa mortis attributes to them too restricted a meaning. A transfer valid as a gift inter vivos, if made under circumstances which impress it with the distinguishing characteristic of being prompted by an apprehension of impending death, occasioned by a bodily or mental state which has a basis for the apprehension that death is imminent, would be a transfer made in contemplation of death within the meaning of the law." <sup>86</sup>

Gifts causa mortis are within the statute, that is, a gift by one who anticipates death as being near, made to take by that event. The donor has a right to recover back the subject of the gift in case he survives, and the gift is in the nature of a legacy and subject to his debts. The statute embraces all gifts made in contemplation of death, and that language does not naturally or necessarily involve a fraudulent intent. <sup>87</sup>

**§ 121. Transfers to Take Effect at Death.**—One of the first devices that suggests itself to accomplish an evasion of inheritance taxation is the making of trusts or other conveyances whereby the grantor or donor

<sup>84</sup> Estate of Price, 62 Misc. Rep. 149, 116 N. Y. Supp. 283.

<sup>85</sup> Rosenthal v. People, 211 Ill. 306, 71 N. E. 1121; Estate of Benton, 234 Ill. 366, 14 Ann. Cas. 107, 18 L. R. A., N. S., 458, 84 N. E. 1026.

<sup>86</sup> State v. Pabst, 139 Wis. 561, 121 N. W. 351.

<sup>87</sup> Rosenthal v. People, 211 Ill. 306, 71 N. E. 1121; In re Edwards, 85 Hun, 436, 32 N. Y. Supp. 901, affirmed, 146 N. Y. 380, 41 N. E. 89.

reserves to himself the beneficial enjoyment of his estate during life, and in order to lay such transfers under tribute and add to the public revenue, inheritance tax laws provide that transfers of property to take effect in possession or enjoyment after the death of the donor or grantor shall be liable to taxation. Statutes singling out such transfers are, as already pointed out, free from constitutional objections;<sup>28</sup> and they have frequently been applied, both to transfers of real estate and to transfers of corporate stock and other personalty.<sup>29</sup> They are not given a retrospective

<sup>28</sup> See sec. 100, ante; *Crocker v. Shaw*, 174 Mass. 266, 54 N. E. 549; *Estate of Keeney*, 194 N. Y. 281, 87 N. E. 428.

<sup>29</sup> *People v. Moir*, 207 Ill. 180, 99 Am. St. Rep. 205, 69 N. E. 905; *Crocker v. Shaw*, 174 Mass. 266, 54 N. E. 549; *Estate of Green*, 153 N. Y. 223, 47 N. E. 292; *Matter of Cruger*, 54 App. Div. 405, 66 N. Y. Supp. 636, affirmed, 166 N. Y. 602, 59 N. E. 1121; *Estate of Hess*, 187 N. Y. 554, 80 N. E. 1111; *Matter of Ogsbury*, 7 App. Div. 71, 39 N. Y. Supp. 978; *Estate of Bostwick*, 38 App. Div. 223, 56 N. Y. Supp. 495, affirmed, 160 N. Y. 489, 55 N. E. 208; *Estate of Bullard*, 37 Misc. Rep. 663, 76 N. Y. Supp. 309; *Estate of Skinner*, 45 Misc. Rep. 559, 92 N. Y. Supp. 972, order modified, 106 App. Div. 217, 94 N. Y. Supp. 144; *Estate of Parsons*, 117 App. Div. 321, 102 N. Y. Supp. 168; *Estate of Jones*, 65 Misc. Rep. 121, 120 N. Y. Supp. 862; *Appeal of Wright*, 38 Pa. 507; *Appeal of Waugh*, 78 Pa. 436; *Reish v. Commonwealth*, 106 Pa. 521; *Appeal of Siebert*, 110 Pa. 329, 1 Atl. 346.

In *Reish v. Commonwealth*, 106 Pa. 521, a deed in fee simple was executed and a bond taken for the payment to the grantor, during his life, of one-half of the net income, and it was held the deed was intended to take effect in possession or enjoyment after the death of the grantor, and the estate was subject to an inheritance tax.

In *Appeal of Seibert*, 110 Pa. 329, 1 Atl. 346, a will was made devising real estate, and the testator then made a deed conveying his lands to persons named, to be disposed of as directed in his will. The land was held subject to an inheritance tax.

If a father and his sons form a partnership and on the same day he conveys real property to them, the income from which is ever afterward during his life carried to the partnership account, such lands, after his death, are subject to the inheritance taxes to the extent of his interest or share in such partnership: *People v. Moir*, 207 Ill. 180, 99 Am. St. Rep. 205, 69 N. E. 905.

In *Blair v. Herold*, 150 Fed. 199, affirmed in *Herold v. Blair*, 158 Fed. 804, 86 C. C. A. 64, a partnership agreement entered into in good faith

operation, unless the legislative intent to that effect is clear.<sup>40</sup>

The owner of property cannot defeat the tax upon it at his death by any device securing to himself for life the income, profit, or enjoyment thereof; the transfer, in order to be without the inheritance tax law, must be such as passes the possession, the title, and the enjoyment of the property in the grantor's lifetime.<sup>41</sup> Exemption from the tax depends upon the passing of the property, with all the attributes of ownership, independently of the death of the transferrer.<sup>42</sup> The

before the enactment of the war revenue act of 1898, was held not taxable as working a transfer of property to take effect in possession or enjoyment after the death of the grantor or bargainer.

In *People v. Kelley*, 218 Ill. 509, 75 N. E. 1038, where a trust deed, not made in contemplation of death, took effect on delivery for the benefit of the beneficiaries, except that the grantor reserved to himself out of the income of the fund two thousand four hundred dollars annually for life, it was held that so much of the estate conveyed as was necessary to produce such income was subject to the inheritance tax.

In *Galard v. Winans*, 111 Md. 434, 74 Atl. 626, a conveyance by a father to trustees to hold during the lifetime of his daughter, interest and increase to be paid to her and she to have the privilege of disposing of the corpus by will, was held not taxable.

In *Estate of Borup*, 28 Misc. Rep. 474, 59 N. Y. Supp. 1097, a gift intended to take effect in possession or enjoyment at the death of the donor is held taxable, although the donee survived the donor only three days.

In *Estate of Sharer*, 36 Misc. Rep. 502, 73 N. Y. Supp. 1057, it is decided that where a testator placed unrecorded deeds executed by him, and securities assigned by him, in envelopes marked as the "property" of the transferees, and placed the envelopes in a bank, labeled with his name and that of the transferees, but continued to control the real estate and receive the income of the securities, the property was subject to the transfer tax.

In *Estate of Anthony*, 40 Misc. Rep. 497, 82 N. Y. Supp. 789, where a man had transferred to his wife's name profits invested with his firm for a number of years, the property was held subject to the inheritance tax on her death.

<sup>40</sup> *Matter of Hendricks*, 1 Con. Sur. 301, 3 N. Y. Supp. 281.

<sup>41</sup> *People v. Estate of Moir*, 207 Ill. 180, 99 Am. St. Rep. 205, 69 N. E. 905; *Lamb's Estate v. Morrow*, 140 Iowa, 89, 18 L. R. A., N. S., 226, 117 N. W. 1118.

<sup>42</sup> *State Street Trust Co. v. Stevens*, 209 Mass. 373, 95 N. E. 851.

intention of the parties as to when the gift is to take effect is the test of taxability.<sup>43</sup>

The statutes imposing the tax relate to estates granted in deeds or conveyances which in some way make the estate granted dependent on the grantor's death; that is, to interests in property, the possession or enjoyment of which is postponed until the death of the grantor.<sup>44</sup>

**§ 122. Marriage Settlements.**—Antenuptial agreements and marriage settlements have been held not within the purview of the statute imposing taxes on transfers made in contemplation of death or to take effect thereafter. One reason for this holding is that such transfers are founded upon a valuable consideration.<sup>45</sup>

**§ 123. Agreements to Make Will.**—Where a man agreed to will his step-daughter all the property he might have at his death, or a portion of it, dependent on the existence of other children, which contract was not performed, and she sued the executor, trustee, and beneficiaries under the will actually made, to obtain a judgment declaring the agreement valid and directing the execution to her of all necessary releases and conveyance of the property, it was held in an action by her to have the estate declared exempt from transfer tax that the devolution of the property was under the will and hence subject to taxation.<sup>46</sup>

<sup>43</sup> Estate of Patterson, 127 N. Y. Supp. 284.

<sup>44</sup> Estate of Bell, 150 Iowa, 725, 130 N. W. 798.

<sup>45</sup> Matter of Baker, 83 App. Div. 530, 82 N. Y. Supp. 390, affirmed, 178 N. Y. 575, 70 N. E. 1094; Estate of Craig, 97 App. Div. 289, 89 N. Y. Supp. 971, affirmed, 181 N. Y. 551, 74 N. E. 1116.

<sup>46</sup> Estate of Kidd, 188 N. Y. 274, 80 N. E. 924. In reaching this conclusion, the court adopts the reasoning of Matter of Dows, 167 N. Y. 227, 88 Am. St. Rep. 509, 52 L. R. A. 433, 60 N. E. 439.

§ 124. **Transfers in Trust, in General.**—A trust deed by which the corpus of property is to go to the grantee at the death of the grantor, and the life use is reserved to the grantor, is a transfer of property intended to take effect at the death of the grantor and taxable as such. Thus where property is delivered by the owner to a trustee, under an instrument purporting to assign it to the trustee and his successors in trust to collect the income and apply the same to the grantor's use during life, and after his death to distribute the property among designated remaindermen, the transfer to the remaindermen is taxable as intended to take effect in possession or enjoyment after the death of the donor.<sup>47</sup> And a transfer of corporate stock, upon the condition that the transferrer shall enjoy the dividends during his lifetime, is subject to the tax imposed upon transfers intended to take effect in possession or enjoyment at or after the death of the transferrer.<sup>48</sup>

Where a person places money with a trust company under agreement that the income is to be paid to a beneficiary as often as dividends become payable; that at the end of five years the settlor may withdraw the whole fund by giving the trustee six months' notice, and the trustee may pay off the trust fund by giving like notice to the settlor; that if no such notices are given, the fund is to remain for another period of five years, and the right of withdrawing or paying off may be exercised at intervals of five years from the date of the agreement; and that in case of the death of the settlor before the termination of the trust or any agreed expenses thereof the principal and unpaid income are to be paid to the beneficiary in sixty days after the expiration of the five year period—the gift

<sup>47</sup> Estate of Green, 153 N. Y. 223, 47 N. E. 292.

<sup>48</sup> Estate of Brandreth, 169 N. Y. 437, 58 L. R. A. 148, 62 N. E. 563.

is "made or intended to take effect in possession or enjoyment after the death of the grantor," and on his death the property is subject to the inheritance tax, to be assessed as of a time thirty days after the expiration of the period of five years referred to in the agreement."<sup>49</sup>

A trust deed does not constitute an absolute gift of the property of the grantor during his life, so as to be exempt from the transfer tax as a gift intended to take effect after his death, where, after the delivery of the deed to the trustee, the grantor is not only entitled to revest himself with the ownership of the property, but continues able to enjoy it or to manage or dispose of it as he might previously have done, by reserving to himself the right to amend the trust by notice to the trustee, to withdraw or exchange any securities, and to control the acts of the trustee in disposing of the securities or making investments."<sup>50</sup>

A gift of securities under an agreement that the donor should, during his life, have "all or such part of the net income thereof as he might wish," the donee to have the possession and management of the securities, does not make the donee the absolute owner thereof, but only a holder in trust, until the death of the donor, to pay the income to him. The gift is therefore taxable as a transfer to take effect after the death of the donor."<sup>51</sup> So a transfer of securities in trust for the relatives of the transferrer, with a life estate reserved to him and power of revocation, is in contemplation of death and subject to the inheritance tax."<sup>52</sup>

<sup>49</sup> *New England Trust Co. v. Abbott*, 205 Mass. 279, 137 Am. St. Rep. 437, 91 N. E. 379.

<sup>50</sup> *Estate of Bostwick*, 160 N. Y. 489, 55 N. E. 210.

<sup>51</sup> *Estate of Cornell*, 170 N. Y. 423, 63 N. E. 445.

<sup>52</sup> *Estate of Bullen*, 143 Wis. 512, 139 Am. St. Rep. 1114, 128 N. W. 109.



§ 125. **Trusts.—The Reservation of a Power to Revoke** the trust at any time during the life of the donor, however, does not necessarily mark the transfer as one intended to take effect after his death and impress it with taxable qualities.<sup>53</sup> Nor, on the other hand, does the absence of power of revocation render the transfer exempt from taxation. The test by which exemption is to be determined does not depend upon whether a power to revoke has or has not been reserved, but rather upon the passing of the property, with all the attributes of ownership, independently of the death of the transferrer.<sup>54</sup> Thus where a trust deed was intended to convey the corpus of the estate to the beneficiary when he attained his twenty-first birthday, the transfer was held not taxable, notwithstanding the reservation in the grantor of a power of revocation;<sup>55</sup> but where a trust deed was not intended to pass the title of the corpus of the estate to the grantee until the grantor died, the latter reserving the power of revocation, the transfer was subjected to the inheritance tax.<sup>56</sup> In both of these cases the income went to the beneficiary after the delivery of the deed and during the life of the grantor. The only substantial difference between them, it will be noticed, is that in the first it was intended that the corpus was to pass to the grantee upon his majority, while in the latter it was intended to pass on the death of the grantor. This difference resulted in a tax in the first case and no tax in the other. The New York court of appeals has intimated that it may have gone too far in affirming the first decision, certainly that it then

<sup>53</sup> *Estate of Masury*, 28 App. Div. 580, 51 N. Y. Supp. 331, affirmed, 159 N. Y. 532, 53 N. E. 1127.

<sup>54</sup> *State Street Trust Co. v. Stevens*, 209 Mass. 373, 95 N. E. 851.

<sup>55</sup> *Estate of Masury*, 28 App. Div. 580, 51 N. Y. Supp. 331, affirmed, 159 N. Y. 532, 53 N. E. 1127.

<sup>56</sup> *Estate of Bostwick*, 160 N. Y. 439, 55 N. E. 210.

reached the limit beyond which the courts cannot go without emasculating the provisions of the statute.<sup>57</sup>

**§ 126. Trusts—Income Payable to Transferees.**—In some instances the question is further complicated by the fact that the beneficiaries are, by the terms of the trust, entitled to the income, in whole or in part, of the corpus of the estate during the life of the grantor. In discussing this aspect of the question Justice Crosby<sup>58</sup> had this to say: "I believe that the authorities sustain the proposition that a trust deed giving all the income of an estate to beneficiaries for the life of the grantor and the corpus at his death, is, so far as the corpus is concerned, a transfer intended to take effect in possession and enjoyment at the death of the grantor, and therefore taxable. In such a case the beneficiary possesses and enjoys the income during the life of the grantor, but possession and enjoyment of income is not possession and enjoyment of the principal which produces that income. It seems to me that the plain wording of the statute is enough to fix taxability upon the entire corpus of the property passing by this trust deed, even if the entire income derived therefrom had gone to the beneficiaries from and after the delivery of the deed, because, by the terms of the deed, the corpus was intended to pass into the possession and enjoyment of the beneficiaries at or after the death of the grantor. . . . People v. Kelley," an Illinois decision, seems to be a case exactly in point, and the statute in Illinois is the same as in New York. There the holding was distinctly in favor of the nontaxability of that portion of the trust fund, the income of which was payable to the beneficiary

<sup>57</sup> Estate of Bostwick, 160 N. Y. 489, 55 N. E. 210; Estate of Patterson, 127 N. Y. Supp. 284.

<sup>58</sup> Estate of Patterson, 127 N. Y. Supp. 284.

<sup>59</sup> People v. Kelley, 218 Ill. 509, 75 N. E. 1038.

during the life of the grantor. But I do not believe the holding in that case is good law in New York, for in *Matter of Cruger*<sup>66</sup> we have a case apparently exactly in point in which the whole trust fund was taxed, although the income to be derived therefrom (except the surplus income, if any, over and above twelve hundred dollars a year) went to the beneficiary during the grantor's life from the time the trust was created. And the court there said, 'the present case seems to fall squarely within the terms of the statute.' "

<sup>66</sup> *Estate of Cruger*, 54 App. Div. 405, 66 N. Y. Supp. 636.

## CHAPTER VIII.

## EXEMPTIONS FROM TAX.

- § 130. Constitutionality of Exemptions.
- § 131. Interpretation of Exemptions.
- § 132. Retrospective Operation of Statute.
- § 133. Exemption Based on Valuation of Property.
- § 134. Manner of Determining Exemption.
- § 135. Property in Foreign Jurisdiction.
- § 136. Exemption Based on Relationship of Parties.
- § 137. Adopted Children.
- § 138. Persons to Whom Decedent Stood as Parent.
- § 139. Illegitimate Children.
- § 140. Nation, State or Municipality.

§ 130. **Constitutionality of Exemptions.**—Probably all inheritance tax laws provide certain exemptions, the leading ones being based on the degree of relationship of the parties, the value of the estate transmitted, and the character of the recipient as a charity. It is not uncommon, especially among the earlier statutes, to exempt transmissions to the children and the surviving husband or wife of the decedent; or, if not exempting them entirely, to impose upon them a lower rate of taxation than upon strangers and distant or collateral relatives. This discrimination against collateral relatives and strangers to the blood of the decedent is in harmony with the general sentiment of humanity, and does not offend the constitutional rule of uniformity and equality in the imposition of taxes. The matter of discrimination between persons of different degrees of relationship is one of legislative discretion, limited, if at all, only by the rule of reasonableness and propriety.<sup>1</sup>

<sup>1</sup> See sec. 21, ante.

The equal protection of the laws is not denied by a statute which subjects to the burdens of an inheritance tax the brothers and sisters of a decedent, while exempting therefrom strangers to the blood, such as

Another exemption is based upon the value of the property transmitted. It is customary to exempt from inheritance taxation estates or inheritances of a limited value. The exemption is usually more liberal for direct than for collateral inheritances. The favoritism toward small or moderate estates or inheritances is often carried further by making the tax rate increase with the value or amount of the estate. Statutes are not unconstitutional because of these features.<sup>2</sup>

Most statutes make a further exemption of gifts to charitable, educational, and religious institutions. There is no constitutional objection to such exemption. A statute imposing a collateral inheritance tax, but exempting bequests for charities, without limiting the amount thereof, does not violate a constitutional provision which prohibits laws exempting from taxation property held for charitable purposes in excess of a specified amount, for an inheritance tax is not a tax on property.<sup>3</sup> And a statute excluding foreign corporations from the exemption of a tax on devises to charities does not abridge the privileges or immunities of the citizens of the United States, nor deny the equality of the laws.<sup>4</sup>

The supreme court of South Dakota has declined to pronounce an inheritance tax statute unconstitutional because making exemptions other than those allowed by the state constitution, since the constitution has reference to property taxes.<sup>5</sup>

the wife or widow of a son or the husband of a daughter of the decedent: *Estate of Campbell*, 143 Cal. 627, 77 Pac. 674, affirmed, 200 U. S. 87, 50 L. Ed. 382, 26 Sup. Ct. Rep. 182.

<sup>2</sup> See sec. 24, ante.

<sup>3</sup> *State v. Henderson*, 160 Mo. 190, 60 S. W. 1093.

<sup>4</sup> *Estate of Speed*, 216 Ill. 23, 108 Am. St. Rep. 189, 74 N. E. 809, affirmed, 203 U. S. 553, 8 Ann. Cas. 157, 51 L. Ed. 314, 27 Sup. Ct. Rep. 171; *Humphreys v. State*, 70 Ohio St. 67, 101 Am. St. Rep. 888, 1 Ann. Cas. 233, 65 L. R. A. 776, 70 N. E. 957.

<sup>5</sup> *Estate of McKennan*, 25 S. D. 369, 126 N. W. 611, 130 N. W. 33.

§ 131. **Interpretation of Exemptions.**—Courts have usually been disposed to give inheritance tax statutes a liberal interpretation in favor of the government, by subjecting to taxation every transmission of property that could reasonably be brought within the purview of the law.\* In California it has been affirmed that a strict construction should be indulged against a rule of exemption which would yield absurd and unjust results;† in Louisiana it has been held that the exception made by the constitution should be construed strictly, and not extended by inference to property not plainly and clearly within its terms;‡ in Tennessee it is said to be axiomatic and fundamental that exemptions from taxation must positively appear, and that no implication will arise that any species of property or subject of taxation is intended to be excluded if it comes within the purview of the statute;§ and in New Jersey, that all exemptions from general taxation are to be considered strictly, the resolution in case of doubt being in favor of the rule which subjects all property to a just share of the public burdens.<sup>10</sup> But while all this is true, a law imposing inheritance taxes is not extended by construction or intendment to subjects lying beyond its domain.<sup>10a</sup>

\* See sec. 35, ante.

† Estate of Bull, 153 Cal. 715, 96 Pac. 366.

‡ Succession of Kohn, 115 La. 71, 38 South. 898.

§ English v. Crenshaw, 120 Tenn. 531, 127 Am. St. Rep. 1025, 17 L. R. A., N. S., 753, 110 S. W. 210.

<sup>10</sup> Estate of Gopsill, 77 N. J. Eq. 215, 77 Atl. 793. To the same effect is Estate of Hickok, 78 Vt. 259, 6 Ann. Cas. 578, 62 Atl. 724.

<sup>10a</sup> Estate of Kerr, 159 Pa. 512, 28 Atl. 354; English v. Crenshaw, 120 Tenn. 531, 127 Am. St. Rep. 1025, 17 L. R. A., N. S., 753, 110 S. W. 210. It has been said that the general principle that statutes of exemption from taxation must be strictly construed against the person or corporation claiming it has been generally applied in cases where an exemption is claimed from the general burden of taxation common upon all property or upon the people generally; and that where a tax is not such a common burden, but reaches only a special class of persons, the rule is that to subject such a class of persons to the tax requires

The exemption in the Louisiana constitution of property from inheritance taxes which has borne its just proportion of taxes is restricted to the particular property inherited; and if taxes thereon have not been paid by the former owner, it matters not that the decedent has paid all the taxes assessed against him on other property which he sold and invested the proceeds in the property inherited. "The exemption is neither personal nor transmissible."<sup>11</sup> State and municipal bonds, though exempt from taxation, do not fall within the above exception, nor do shares of stock not taxed, though the corporation in which they are held may have been taxed on its property.<sup>12</sup>

The exemption of property from the payment of the tax follows the proceeds used to discharge a legacy. An inheritance tax is due on a legacy not paid from the proceeds of exempt property, but it is not due on a legacy necessarily paid from the proceeds of exempt property.<sup>13</sup>

**§ 132. Retrospective Operation of Statute.**—The rights and obligations of all parties relative to the payment of an inheritance tax are ordinarily determinable as of the time of the death of the decedent; the statute imposing the tax usually has no retrospective operation, and does not apply to estates in course of settlement or to property that has vested in the beneficiaries at the time the law goes into effect, at least unless the legislative intent plainly appears to the contrary.<sup>14</sup> And such is true in regard to exemptions;

a clear legislative intention: *Estate of Mergentine*, 129 App. Div. 367, 113 N. Y. Supp. 948, 953, citing *Estate of Euston*, 113 N. Y. 174, 3 L. R. A. 464, 21 N. E. 87; *Estate of Fayerweather*, 143 N. Y. 114, 38 N. E. 278; *Estate of Harbeck*, 161 N. Y. 211, 55 N. E. 850.

<sup>11</sup> *Succession of Pritchard*, 118 La. 883, 43 South. 537.

<sup>12</sup> *Succession of Kohn*, 115 La. 71, 38 South. 898.

<sup>13</sup> *Succession of Becker*, 118 La. 1056, 43 South. 701.

<sup>14</sup> See sec. 36, ante.

statutes providing for them will, as a rule, be given a prospective operation, applying only to the future, and not affecting the right of the state to taxes in case of deaths prior to the passage of the exemption act.<sup>15</sup> If an educational bequest was subject to the inheritance tax at the time of the testator's death, the tax may be collected, notwithstanding proceedings therefor are not commenced until after an amendment to the statute exempting the bequest has gone into effect.<sup>16</sup>

In California it has been decided that the section of the statute which purports retroactively to exempt resident nephews and nieces, and educational and benevolent institutions, from the payment of unpaid collateral inheritance taxes, violates the constitutional provisions of that state forbidding special legislation releasing any existing obligation to the state, and prohibiting the legislature from making any gift to any individual.<sup>17</sup> But in Maryland, where the legislature, by amendment, included "husbands" in the exempt class, and provided that the exemption should apply in all cases where the tax had not actually been paid,

<sup>15</sup> *Provident Hospital etc. Assn. v. People*, 198 Ill. 495, 64 N. E. 1031; *Succession of Becker*, 118 La. 1056, 43 South. 701; *Sherrill v. Christ Church*, 121 N. Y. 701, 25 N. E. 50. The exemption in this last case was in favor of certain corporations. Said the court: "The act provides that the personal estate of certain corporations, among which are religious corporations, shall be exempt from taxation, and that the collateral inheritance tax act shall not apply to them. It is true that the state could by act of the legislature duly passed release taxes already due. But legislative acts are always construed as prospective in their operation unless by their plain language it can be seen that it was the legislative intention that they should have retroactive effect. This act was clearly prospective in its operation, and applied only to the future, and as this tax became due and payable before its passage, it may still be enforced in the manner provided in the collateral inheritance act." See, too, *Estate of Wolfe*, 2 Con. 600, 15 N. Y. Supp. 539.

<sup>16</sup> *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350.

<sup>17</sup> *Estate of Stanford*, 126 Cal. 112, 45 L. R. A. 788, 54 Pac. 259, 58 Pac. 462, Justice Henshaw dissenting.



the court, adopting the language of counsel, said: "If the legislature is satisfied that a given tax is no longer necessary, that it is unjust, that a change of circumstances requires its repeal, that public policy demands that the repeal should be prompt, should give instant relief, and should therefore extend to all who had not yet actually paid, the legislature has in its discretion the constitutional right so to enact, without being at the same time compelled to embarrass the treasury by a sweeping restitution to all who had paid the tax from the time of its imposition. Under some circumstances such a retrospective exemption might be highly expedient, and under others not. The question is one of policy for the legislature, and not one of law for the courts."<sup>18</sup>

**§ 133. Exemption Based on Valuation of Property.** It is usual for inheritance tax laws to exempt certain transmissions from taxation if the valuation does not exceed a specified amount. There is no constitutional objection, as has already been seen, to this form of exemption.<sup>19</sup> The valuation is generally determinable as of the date of the death of the decedent, for that is the time the transmission takes effect; hence the increase or income after death is not considered in estimating the value of the estate. But of course the question depends upon the legislative intent, as expressed in the statute, and in some states the increase arising between the date of the death and the date of distribution is taken into consideration.<sup>20</sup>

**§ 134. Manner of Determining Exemption.**—Under the obscure wording of many statutes it is a matter

<sup>18</sup> *Montague v. State*, 54 Md. 481, 483. See, also, *Roman Catholic Church v. Niles*, 86 Hun, 221, 33 N. Y. Supp. 243.

<sup>19</sup> See sec. 24, ante.

<sup>20</sup> See sec. 52, ante.

of no small difficulty to determine whether the exemption is from the separate legacies or inheritances or from the aggregate value of the estate of the decedent. Some statutes have been construed to allow the exemption from each legacy or distributive share, or, otherwise expressed, to each legatee or distributee.<sup>21</sup> At one time this rule prevailed in New York, but since the acts of 1892 and 1896, the whole property passing to persons not exempt must be considered together, and if the aggregate amount thereof exceeds the amount exempted by the statute, the tax is collectible, although each individual inheritance, bequest

<sup>21</sup> *People v. Koenig*, 37 Colo. 283, 11 Ann. Cas. 140, 85 Pac. 1129; *Booth v. Commonwealth*, 130 Ky. 88, 33 L. R. A., N. S., 592, 113 S. W. 61; *State v. Hamlin*, 86 Me. 495, 41 Am. St. Rep. 569, 25 L. R. A. 632, 30 Atl. 76; *State v. Probate Court*, 101 Minn. 485, 112 N. W. 878; *Knowlton v. Moore*, 178 U. S. 41, 44 L. Ed. 969, 20 Sup. Ct. Rep. 747. The Minnesota court, in the above case, expresses the rule thus: In determining the value of the estate for the purpose of fixing the amount of the inheritance tax, where the estate descends to two or more legatees or devisees in equal shares, an exemption to each should be allowed.

In the above Colorado case, the words "such estate" are construed as referring to property received by each person.

In the case of *State v. Hamlin*, 86 Me. 495, 41 Am. St. Rep. 569, 25 L. R. A. 632, 30 Atl. 76, the court, in construing the Maine statute, says: "The question whether the exemption of five hundred dollars in the first section is an exemption from the corpus of the estate, or a several exemption of that sum from each portion of the estate passing by will or descent to persons outside the exempted classes, is raised by this appeal. A careful examination of the statute satisfies us that the legislature intended the exemption to apply to each taker within the class subject to the duty. The language of section 1 is that 'all property . . . which shall pass by will or by the intestate laws of this state . . . other than to or for the use of the father, etc., . . . shall be liable to a tax of two and one-half per cent of its value above the sum of five hundred dollars,' etc., and any grantee under a conveyance made during the grantor's life, to take effect after his death, 'shall be liable for all such taxes.' It is difficult to construe this language to mean other than that such taker, subject to the tax, shall be liable upon the amount received above five hundred dollars. This construction is greatly aided by the second section. . . . This provision is plainly inconsistent with the claim that the five hundred dollars exemption is to be taken once for all from the corpus of the decedent's entire estate."

or devise is less than the exemption. The exemption is taken from the estate of the decedent as a whole, not from each interest transferred; and if the aggregate amount of the estate exceeds the amount of the exemption which the statute allows, the tax must be imposed upon each inheritance or bequest, irrespective of whether it exceeds the exemption.<sup>22</sup> This interpre-

<sup>22</sup> *Estate of Hoffman*, 143 N. Y. 327, 38 N. E. 311; *Estate of Corbett*, 171 N. Y. 516, 64 N. E. 209; *Estate of Costello*, 189 N. Y. 288, 82 N. E. 139; *Estate of Hall*, 88 Hun, 68, 34 N. Y. Supp. 616; *Estate of Birdsall*, 22 Misc. Rep. 180, 49 N. Y. Supp. 450; *Estate of De Graaf*, 24 Misc. Rep. 147, 53 N. Y. Supp. 591; *Estate of Curtis*, 31 Misc. Rep. 83, 64 N. Y. Supp. 574; *Estate of Rosendahl*, 40 Misc. Rep. 542, 82 N. Y. Supp. 992; *Estate of Garland*, 88 App. Div. 380, 84 N. Y. Supp. 630; *Estate of Mock*, 113 App. Div. 913, 100 N. Y. Supp. 1130. In the *Costello* case the New York court of appeals decides that in case the personal property of the deceased person exceeds in the aggregate five hundred dollars, the amount passing to his nieces, although their individual shares are less than two hundred dollars, is taxable.

And in the above *Corbett* case the New York court of appeals decides that when the aggregate amount of the personal property exceeds ten thousand dollars, the tax must be imposed upon each and all of the estates which are exempted therefrom, when the aggregate amount of the personal property does not exceed the sum of ten thousand dollars, except upon legacies to a bishop or any religious corporation. "To give a concrete illustration," said Chief Justice Parker, "of the working of the statute as construed by this court: An estate of fifteen thousand dollars, in which six thousand dollars was given to a bishop or religious corporation, which are specifically exempted from taxation by the statute, and nine thousand dollars given to a brother and sister, would not be taxable because the aggregate amount passing to persons not specifically exempted would not be of the value of ten thousand dollars; but if only five thousand dollars were given to the bishop or corporation and ten thousand dollars were given to the next of kin, whether in different classes or not, all would be taxed at the rate provided in the statute, because the aggregate amount thus given is equal to the sum of ten thousand dollars."

In *Estate of Conklin*, 39 Misc. Rep. 771, 80 N. Y. Supp. 1124, it is said that by no possible construction can the *Corbett* case be made to hold that bishops and religious corporations are the only specific exemptions in the statute, and it is held that if an estate falls under two thousand five hundred dollars, of which all but two hundred and fifty dollars passes to sisters of the decedent, none of the property can be taxed. Said the court: "The sum of this law is, therefore, that, given an estate of less than ten thousand dollars value, it is taxable only when

tation has been adopted in a number of other states besides New York.<sup>23</sup>

The question has naturally arisen, in fixing the inheritance tax, whether the amount of the exemption can be deducted from an estate or distributive share which exceeds in value the amount of the exemption, or whether the exemption is restricted to such estates or distributive shares as do not exceed the exemption in amount. This question comes near being encroached upon in the preceding paragraph. It will

that part of it passing to persons not specifically exempted equals or exceeds five hundred dollars in value."

A legacy of less than five hundred dollars to a niece who has stood in the relation of child to the testator for twenty years or more, which legacy is exempt from the tax, can be added to legacies to nephews and their wives in order to make the aggregate estate exceed five hundred dollars. She is not a person "specifically exempt," as is a bishop: *Estate of Murray*, 96 App. Div. 128, 89 N. Y. Supp. 71.

For other cases construing the New York statutes, see *Estate of Howe*, 112 N. Y. 100, 2 L. R. A. 825, 19 N. E. 513; *Estate of Sherwell*, 125 N. Y. 376, 26 N. E. 464; *Estate of Swift*, 2 Con. 644, 16 N. Y. Supp. 193, affirmed, 64 Hun. 629, 19 N. Y. Supp. 292, modified in 137 N. Y. 77, 18 L. R. A. 709, 32 N. E. 1096; *Estate of Peck*, 24 Abb. N. C. 365, 9 N. Y. Supp. 465; *Estate of Underhill*, 2 Con. 262, 20 N. Y. Supp. 134; *Estate of Bird*, 2 Con. 376, 11 N. Y. Supp. 895; *Estate of Bliss*, 6 App. Div. 192, 39 N. Y. Supp. 875.

Under the New York statute of 1903, in ascertaining whether a sister is exempt as to real and personal property willed her by her brother, both the realty and the personalty should be added together to ascertain whether or not the value exceeds ten thousand dollars: *Estate of Hallock*, 42 Misc. Rep. 473, 87 N. Y. Supp. 255.

<sup>23</sup> *Commonwealth v. Boyle*, 2 Del. Co. Rep. 335; *Herriott v. Bacon*, 110 Iowa, 342, 81 N. W. 701; *Gilbertson v. McAuley*, 117 Iowa, 522, 91 N. W. 788; *Stelwagen v. Durfee*, 130 Mich. 166, 89 N. W. 728; *Estate of Howell*, 147 Pa. 164, 23 Atl. 403; *Dixon v. Rickerts*, 26 Utah, 215, 72 Pac. 947.

Said the court in the above case of *Estate of Howell*, 147 Pa. 164, 23 Atl. 403: "The intention of the legislature is clear, that the liability to the tax is to be determined, not by the amount of the legacy, but by the clear value of the estate passing to persons or bodies corporate not exempt from taxation. If the net value of the estate to be distributed exceeds two hundred and fifty dollars, it follows, therefore, that legacies or distributive shares passing to collaterals, strangers in blood, etc., are liable to the tax."

be considered further in a subsequent chapter; so also will the deduction of the exemption in fixing progressive rates of taxation.<sup>22a</sup> In Iowa when an estate does not contain above one thousand dollars after payment of all debts, it is wholly exempt; if otherwise, all property passing to collateral distributees is subject to the tax. There is no exemption where the value of the estate, after the debts are paid, exceeds one thousand dollars.<sup>22b</sup>

**§ 135. Property in Foreign Jurisdiction.**—The Massachusetts statute, after providing that executors and administrators shall be liable for the taxes it imposes, continues: "But no bequest, devise or distributive share of an estate which shall so pass to or for the use of a husband, wife, father, mother, child or adopted child of the deceased, unless its value exceeds ten thousand dollars, and no other bequest, devise or distributive share of an estate unless its value exceeds one thousand dollars, shall be subject to the provisions of this act." Speaking of this provision, Justice Morton says: It is plain "that the 'bequest, devise or distributive share' referred to is of property within the jurisdiction of this commonwealth. The section deals with property in this commonwealth, and nowhere else. The word 'estate' in the connection in which it is used means, and can only mean, property in this commonwealth. It necessarily follows that in determining whether 'a bequest, devise or distributive share' is or is not exempt, the treasurer and receiver general have no right to take into account the amount received by the devisees or distributees from property situated in another state or country. To do so would

<sup>22a</sup> See sec. 225, post.

<sup>22b</sup> *Herriott v. Bacon*, 110 Iowa, 342, 81 N. W. 701; *Gilbertson v. McAuley*, 117 Iowa, 522, 91 N. W. 788; *Morrow v. Durant*, 140 Iowa, 437, 17 Ann. Cas. 850, 25 L. R. A., N. S., 474, 118 N. W. 781.

be to tax the devisee or distributee indirectly for such property to an amount equal to the amount of the exemption here, and would be contrary to the principle on which the legacy and succession tax is based, which is that it is an excise tax upon the privilege of passing title to property on the death of its owner. In order to be valid the tax must be levied by the authority that confers the privilege upon property which passes by virtue of the privilege."<sup>22c</sup>

**§ 136. Exemption Based on Relationship of Parties.**—Exemptions are sometimes made because of the relationship between the decedent and the heir or legatee. Exemptions of this kind were more numerous under the former statutes than under the recent ones, the tendency having been to bring all persons, if the valuation of the property exceeds a specified amount, within the operation of the law. The earlier statutes reached only collateral relatives and strangers, and exempted lineal descendants, father and mother, husband or wife.<sup>24</sup> This species of exemption

<sup>22c</sup> *Attorney General v. Barney* (Mass.), 97 N. E. 750.

<sup>24</sup> *In re Smith*, 5 Dem. Sur. (N. Y.) 90; *Estate of Cobb*, 14 Misc. Rep. 409, 36 N. Y. Supp. 448; *Estate of Farley*, 15 N. Y. St. Rep. 727; *Will v. Seaver*, 63 App. Div. 283, 71 N. Y. Supp. 544. Under the collateral inheritance tax law of 1885, it has been held in New York that "lineal descendants" include only the direct descendants of the testator or intestate, and do not embrace children of his brothers and sisters: *In re Miller*, 5 Dem. Sur. (N. Y.) 132, 45 Hun, 244.

In Ohio, bequests to nephews and nieces are exempt from the collateral inheritance tax, but this exemption does not extend to grand nieces or to nephews of the husband or wife of the decedent: *Estate of Bates*, 7 Ohio N. P. 625, 5 Ohio S. & C. P. Dec. 547. Bequests to half-brothers are exempt: *Estate of Ormsby*, 7 Ohio N. P. 542, 5 Ohio S. & C. P. Dec. 553.

In Pennsylvania, a grandmother is subject to the collateral inheritance tax: *McDowell v. Addams*, 45 Pac. 430; but step-children are not: *Commonwealth v. Randall*, 225 Pa. 197, 73 Atl. 1109.

Where a son made a devise to his mother and she died first, leaving as heirs his brother and sister, it has been decided, under the statutes of Iowa, that the property passes directly from the testator to his

is not open to objection on constitutional grounds because of the discrimination which it works.<sup>25</sup>

§ 137. **Adopted Children.**—Under some of the inheritance tax statutes adopted children are not entitled to the same favor or exemption that is accorded natural children of the decedent. Although an adopted

brother and sister and is subject to the collateral inheritance tax: *Estate of Hulett*, 121 Iowa, 423, 96 N. W. 952.

That real estate devised by a man to his widow is not subject to the inheritance tax in Montana, see *Hinds v. Wilcox*, 28 Mont. 4, 55 Pac. 355. The statute of Illinois exempting a life estate in property which a man wills to his wife does not apply if she renounces the will and elects to take what the law gives her: *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350. But under the Tennessee statute, exempting property passing to the widow, it has been held that when a nonresident died possessed of property in that state which was a part of the residue of his estate, one-half of which he willed to his widow, who elected to take one-half of such property in kind, such half was not subject to taxation: *Memphis Trust Co. v. Speed*, 114 Tenn. 677, 88 S. W. 321, citing *Matter of James*, 144 N. Y. 6, 38 N. E. 961.

A legacy to the husband of the daughter of the testator was exempt under the New York statutes of 1885, although the daughter died before the testator: *In re Woolsey*, 19 Abb. N. C. 232; *In re McGarvey*, 6 Dem. Sur. (N. Y.) 145. And the statutes of 1892, exempting a legacy to the husband of the daughter of a testator, applies to a husband of a deceased daughter, even though he has again married: *Estate of Ray*, 13 Misc. Rep. 480, 35 N. Y. Supp. 481. But in Pennsylvania it has been decided that where, under a statute exempting property passing by will to the wife or widow of the son of the person dying possessed thereof, a woman bequeathed the residue of her estate to her daughter in law, who was the widow of her son, and the widow remarried in the lifetime of the testatrix and was still married at the death of the testatrix, the legacy was taxable: *Commonwealth v. Powell*, 51 Pa. 438.

The term "stranger," within the meaning of a statute imposing a tax on inheritances falling to "ascendants, descendants, collateral relations, and strangers, is intended to exhaust the whole category of persons who might be called to the inheritance, whether by will or ab intestato, and applies to all who have not in fact (or by law) the status of legitimate ascendants, descendants, or collateral relations": *Succession of Baker*, 129 La. 74, 55 South. 714.

A son in law is a "stranger," and hence subject to the tax imposed by the United States war revenue act of 1898: *King v. Eidman*, 128 Fed. 815.

<sup>25</sup> See sec. 21, ante.

child has the right to inherit, he has been held not a child in fact,<sup>26</sup> or "lineal issue,"<sup>27</sup> so as to be exempt from the collateral inheritance tax. In New York the word "children," in the collateral inheritance act of 1885, did not include adopted children, and, prior to the amendment of that act in 1887, a devise or bequest to an adopted child of the testator was subject to taxation.<sup>28</sup> The amendment of 1887, exempting adopted children from the collateral inheritance tax,<sup>29</sup> applies to children adopted under proceedings taken in another state.<sup>30</sup> But the amendment is not retrospective in operation, and hence does not exempt the adopted child of one who died before its enactment.<sup>31</sup>

The widow of an adopted son of a testator is a "widow of a son" of the testator;<sup>32</sup> and a son of an adopted daughter of a testator is a "lineal descendant."<sup>33</sup> In California, under the act of 1893, legacies

<sup>26</sup> *Commonwealth v. Nancrede*, 32 Pa. 389; *Tharp v. Commonwealth*, 58 Pa. 500; *Estate of Wayne*, 2 Pa. Co. Ct. Rep. 93, 18 Wkly. Notes Cas. 10; *Estate of Province*, 4 Pa. Dist. Rep. 591. This rule was varied, by special statute, in favor of Matthias H. Henderson: See *Commonwealth v. Henderson*, 172 Pa. 135, 38 Atl. 368.

<sup>27</sup> *Kerr v. Goldsborough*, 150 Fed. 289, 80 C. C. A. 177, construing the United States statute, and holding that an adopted child, entitled to all rights of heirship of a child born in wedlock, is a stranger within the fifth class, not "lineal issue" within the first class.

<sup>28</sup> *Estate of Miller*, 110 N. Y. 216, 18 N. E. 139.

<sup>29</sup> *In re Surrogate of Cayuga County*, 46 Hun, 657.

<sup>30</sup> *Estate of Butler*, 58 Hun, 400, 12 N. Y. Supp. 201.

<sup>31</sup> *Warrimer v. People*, 6 Dem. Sur. (N. Y.) 211; *Estate of Thompson*, 14 N. Y. St. Rep. 487; *Estate of Miller*, 110 N. Y. 216, 18 N. E. 139, holding that where, prior to the passage of the amendatory act, the surrogate affirmed an appraisement of the estate of a testatrix and assessed the tax chargeable to the devisees and legatees under the act of 1885, among whom was an adopted child, which tax was not paid until the amendment of 1887 went into effect, the amendatory act did not release from liability for the tax.

<sup>32</sup> *Estate of Duryea*, 128 App. Div. 205, 112 N. Y. Supp. 611.

<sup>33</sup> *Estate of Cook*, 187 N. Y. 253, 79 N. E. 991. In construing the New York statutes, the court, in this case, observes: "In the eye of the law, therefore, adopted children are lineal descendants of their foster parent. They are in the line of descent from him through the command



in trust for the benefit of the children of the adopted daughter of a testator are excepted from the provisions of the law establishing a tax upon collateral inheritances, bequests, and devises."<sup>44</sup> And in Louisiana adopted children not related by blood to the person from whom they inherit are neither ascendants nor collaterals, and, as they inherit under the law, they are not strangers to the estate, from which it follows that if the inheritance falling to them is liable to taxation under the acts of 1904 and 1906, it must be as an inheritance falling to persons who by article 214 of the Civil Code are given the status of descendants, and as thus classified it is not liable to the tax if valued at less than ten thousand dollars."<sup>45</sup>

**§ 138. Persons to Whom Decedent Stood as Parent.** In addition to the exemptions in favor of children born in lawful wedlock and children by adoption, an exemption is also made in favor of "any person" to whom the decedent for not less than ten years prior to the transmission "stood in the mutually acknowledged relation of a parent." The words "mutually acknowledged" are equivalent to "mutually recognized." The exemption is not confined to illegitimate children of the decedent; indeed, the fact of their being his offspring is an immaterial circumstance. The exemption is "intended to have a broader scope;

of the statute, the same as if that line had been established by nature. The legislature created the relation and extended it to the right of inheritance, not only as between the foster parent and the adopted child, but also as between the children of the adopted child and the foster parent. We think the right of succession by M. was subject to taxation at the same rate as if his mother had sprung from the loins of the testator."

In the prior case of *Estate of Fisch*, 34 Misc. Rep. 146, 69 N. Y. Supp. 493, it is affirmed that the exemption accorded an adopted child does not inure to its issue.

<sup>44</sup> *Estate of Winchester*, 140 Cal. 468, 74 Pac. 10.

<sup>45</sup> *Succession of Frijalo*, 123 La. 71, 48 South. 652.

to include, among others, those cases, not infrequent, where a person without offspring, needing the care and affection of someone willing to assume the position of a child, takes, without formal adoption, a friend or relative into his household, standing to such person in loco parentis, or as a parent, and receives in return filial attention and service. The fixing of a period of ten years, during which the relation must continue in order to entitle such person to the benefit of the exemption, is a safeguard against imposition, and when for that period this relation has been mutually acknowledged, the case is fairly brought within the policy upon which children are exempted from the imposition of a tax.”<sup>22</sup>

The fact that the person was, at the inception of the mutually acknowledged relation, an adult did not,

<sup>22</sup> Estate of Beach, 154 N. Y. 242, 48 N. E. 516; Estate of Davis, 184 N. Y. 299, 77 N. E. 259; Estate of Thomas, 3 Misc. Rep. 388, 24 N. Y. Supp. 713; Estate of Stilwell, 34 N. Y. Supp. 1123; Estate of Lane, 39 Misc. Rep. 522, 80 N. Y. Supp. 381.

“The word ‘mutual’ in this statute has no abstruse signification. It means and requires reciprocity of action, correlation and interdependence, and finds its best illustration and application in relations existing between parents and children, which are always mutual”: Estate of Butler, 58 Hun, 400, 12 N. Y. Supp. 201.

“The use of the words ‘mutually acknowledged relation’ was intended to embrace a class of persons who, while not in fact sustaining the blood relation of parent and child, had assumed and adopted that conventional relation, by mutually acknowledging it by their method of living, and mutual recognition of that relation for ten years”: Estate of Nichols, 91 Hun, 134, 36 N. Y. Supp. 538.

In the following cases it was held that the relation had not been established: Estate of Moulton, 11 Misc. Rep. 694, 33 N. Y. Supp. 578, holding that there was no “dependence by the nieces upon their uncle”; Estate of Sweetland, 20 N. Y. Supp. 310; Estate of Birdsall, 22 Misc. Rep. 180, 49 N. Y. Supp. 450; Estate of Deutsch, 107 App. Div. 192, 95 N. Y. Supp. 65.

In the last two cases cited, the circumstance that the legatees referred to the testator or testatrix as “uncle” or “aunt,” and the testator referred to them as “nieces,” was held a material circumstance. But in Estate of Davis, 184 N. Y. 299, 77 N. E. 259, the fact that the child did not address her uncle (the testator) and aunt as father and

as the New York statute formerly stood, exclude him from the benefit of the exemption;<sup>37</sup> but the statute has been amended to provide that the relationship must begin at or before the fifteenth birthday and continue for ten years thereafter.<sup>38</sup> The statute has also been amended so as to require that "the parents of such child shall be deceased when such relationship commenced." So that the exemption, as amended in 1905, excludes persons from its benefits unless the relationship was formed in their tender years and after the decease of their parents.<sup>39</sup>

The amendment of the New York statute in 1887 to exempt persons who had stood for more than ten years in the mutually acknowledged relation of children to decedents, was not retrospective in operation, so as to exempt a legatee where the testator had died before the passage of the amendatory act, but proceedings were not instituted for the collection of the tax until after the passage.<sup>40</sup>

**§ 139. Illegitimate Children.**—Where the law provides that a mother and her illegitimate child shall en-

mother, nor they call her daughter, was regarded as of small importance. To the same effect is *Estate of Spencer*, 4 N. Y. Supp. 395, where the child always addressed the testatrix as "auntie"; and *Estate of Wheeler*, 1 Misc. Rep. 450, 22 N. Y. Supp. 1075, where the testator referred to the child in his will as "our friend."

A step-parent does not necessarily stand in the relation of a parent, within the meaning of the statute, to step-children: *Estate of Capron*, 10 N. Y. Supp. 23.

Children of the excepted persons were held not within the exemption in *Estate of Bird*, 11 N. Y. Supp. 895; *Estate of Moore*, 90 Hun, 162, 35 N. Y. Supp. 782.

<sup>37</sup> *Estate of Beach*, 154 N. Y. 242, 48 N. E. 516.

<sup>38</sup> *Estate of Davis*, 184 N. Y. 299, 77 N. E. 259.

<sup>39</sup> *Estate of Wheeler*, 115 App. Div. 616, 100 N. Y. Supp. 1044; *Estate of Stebbins*, 52 Misc. Rep. 438, 103 N. Y. 563 (where the persons claiming the exemption were step-daughters of the decedent, and their father was still living); *Estate of Harder*, 124 App. Div. 77, 103 N. Y. Supp. 154 (holding that both parents must be deceased).

<sup>40</sup> *Estate of Ryan*, 3 N. Y. Supp. 136.

joy all the rights and privileges one to the other in the same manner and to the same extent as if the child had been born in lawful wedlock, an illegitimate child, inheriting from its mother, is not required to pay a collateral inheritance tax.<sup>41</sup> Where a father has acknowledged his illegitimate child in the manner prescribed by statute, an inheritance passing from him to the child is not subject to the collateral inheritance tax.<sup>42</sup> And children legitimated by the subsequent marriage of their parents are not liable to that tax on property passing to them from their father.<sup>43</sup>

**§ 140. Nation, State or Municipality.**—It has been decided that a legacy to the United States is subject to state inheritance taxation, and cannot be claimed exempt on the ground that the tax is on United States property, nor on the ground that the statute imposes taxes upon transfers “to persons or corporations exempt by law from taxation.”<sup>44</sup> It has also been decided

<sup>41</sup> *Commonwealth v. Mackey*, 222 Pa. 613, 72 Atl. 250.

<sup>42</sup> *Wirringer v. Morgan*, 12 Cal. App. 26, 106 Pac. 425. In *Galbraith v. Commonwealth*, 14 Pa. 258, it is decided that where a man died leaving collateral heirs, and an illegitimate son who was legitimated by an act of the legislature which was not approved until the day after the death of the father, the entire estate was subject to the collateral inheritance tax.

And in *Commonwealth v. Ferguson*, 137 Pa. 595, 10 L. R. A. 240, 20 Atl. 870, where an act of the legislature was, in respect to an illegitimate son, an act of adoption, not of legitimation, it was held that a devise to him from his father was subject to the collateral inheritance tax.

<sup>43</sup> *Commonwealth v. Gilkeson*, 18 Pa. Super. Ct. 516.

<sup>44</sup> *United States v. Perkins*, 163 U. S. 625, 41 L. Ed. 287, 16 Sup. Ct. Rep. 1073, affirming *Estate of Merriam*, 141 N. Y. 479, 36 N. E. 505. But in *Hooper v. Shaw*, 176 Mass. 190, 57 N. E. 361, it is held that a legacy paid to the United States under the statute of June 13, 1898, chapter 448, sections 29, 30, is to be deducted before paying the state succession tax under the statute of 1891, chapter 425. In the course of the opinion the court uses this language:

“Whatever the nature of the state succession tax, it is admitted and is obvious that the value of the property concerned is made the measure

that a bequest to a city is not exempt from a legacy tax.<sup>46</sup> But if the property of a state or municipality, held for public purposes, is impliedly exempt from taxation, and for obvious reasons this is the general rule, then it is not illogical to hold, and it has been so held, that a testamentary gift to a city for a public use, such as a library building, is exempt from the inheritance tax;<sup>47</sup> and that a bequest to a city and county for a hospital, and to the regents of the state university for an auditorium, is also exempt.<sup>48</sup> Gifts of this nature might well be regarded as exempt as bequests for charitable or educational purposes. In fact, it has been decided that a legacy to a city or town for the establishment and maintenance of a free public library for the use of the inhabitants of the municipality, and for the erection of a library building and town hall, is exempt where the statute makes an exemption of bequests to educational or charitable institutions.<sup>49</sup>

of the tax. This appears from the words of the act, which also show at what moment the value is to be taken. The words are 'property . . . which shall pass . . . to any person.' Without throwing doubt upon the power of the state to adopt a harsher rule, such as has been applied by some of the surrogates in New York, we are of opinion that these words most naturally signify the property which the legatee actually would get were it not for the state tax imposed by the sentence in which the words occur: See *In re Merriam*, 141 N. Y. 479, 484, 36 N. E. 506; S. C., sub nom. *United States v. Perkins*, 163 U. S. 625, 630, 41 L. Ed. 287, 16 Sup. Ct. Rep. 1073. It already has been decided upon this ground that expenses of administration are to be deducted: *Callahan v. Woodbridge*, 171 Mass. 595, 599, 600, 51 N. E. 176."

<sup>46</sup> *Estate of Hamilton*, 148 N. Y. 310, 42 N. E. 717; *Estate of McKennan*, 25 S. D. 369, 126 N. W. 611, reversed, (S. D.) 130 N. W. 33. In the New York case it is held that the provision in the collateral inheritance tax law of 1887, exempting bequests to the "societies, corporations and institutions now exempted by law from taxation," was not intended to apply to bequests to municipal corporations. As to exemption of state, see *Estate of Graves*, 66 App. Div. 267, 72 N. Y. Supp. 815.

<sup>47</sup> *Estate of Thrall*, 157 N. Y. 46, 51 N. E. 411.

<sup>48</sup> *Estate of Macky*, 46 Colo. 79, 23 L. R. A., N. S., 1207, 102 Pac. 1075.

<sup>49</sup> *Town of Essex v. Brooks*, 164 Mass. 79, 41 N. E. 119.

## CHAPTER IX.

## EXEMPTION OF CHARITIES.

- § 145. Charitable Uses and Institutions, in General.
- § 146. Foreign Charitable Institutions, in General.
- § 147. Foreign Charities—Constitutionality of Discrimination.
- § 148. Educational Institutions.
- § 149. Religious Institutions.
- § 150. Institutions for Support of the Aged or Indigent.
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§ 145. Charitable Uses and Institutions, in General.—A few of the inheritance tax statutes make no exemption in favor of charities, or institutions of a benevolent, educational, or religious character. In holding charities subject to inheritance taxation, where the statute does not expressly confer an exemption, the courts argue that the tax is on the transmission, or is a diminution of the amount that would otherwise pass, and that it is not a tax on the property of the charity. Hence it is affirmed that such a tax is not against public policy because aimed at a fund given to a charitable or educational purpose, nor is it forbidden by a general law that the property of a charity is exempt from taxation.<sup>1</sup> This line of rea-

<sup>1</sup> *Seavell v. Arnold*, 131 Ky. 426, 115 S. W. 232; *Estate of Finnen*, 196 Pa. 72, 46 Atl. 269; *Miller v. Commonwealth*, 27 Gratt. (Va.) 110. Said the Kentucky court, in the above case, "the tax is not levied upon the fund, but upon its transmission, and hence the argument that it is against the policy of the law to levy a tax upon a fund devised to a public school has no bearing upon the case at bar, for the reason that this fund does not become a fund devoted to the maintenance of a school until the law relative to its transmission has been complied with. The tax must be paid before the fund in question can become the property of the school or be devoted to educational purposes."

And in the above Pennsylvania case the court said: "It is very manifest from the language of the statute that the subject of the

soning is in harmony with the general disposition of the judicial mind to bring all transfers of property within the operation of the inheritance tax law unless the exemption is unmistakably pronounced by the legislature.

The majority of the statutes expressly exempt transmissions to certain classes of charities from inheritance taxation,<sup>2</sup> but in some of the states a tendency is

taxation enacted is the whole estate or interest that passes to the persons who are the recipients, and the duty imposed is five per cent of the whole amount, and there can be no discharge from the liability for the amount of the same except by actual payment of the whole of the tax. There is no kind of exception, qualification, condition or reservation as to what it is that is the subject of the tax. It is the whole of the estate that passes. There is no exemption from the tax in favor of charities. That which the legatee gets and keeps is the aggregate sum bequeathed, less the amount of the tax. The tax must be retained by the person who has the decedent's property in charge. It is therefore not a tax upon the property or money bequeathed, but a diminution of the amount that otherwise would pass under the will or other conveyance, and hence that which the legatee really receives is not taxed at all. It is that which is left after the tax has been taken off. It is only imposed once, and that is before the legacy has reached the legatee and before it has become his property. If the tax were a continuing charge imposed year by year after the ownership of the legacy has become vested in the legatee, there would then be room for the claim that it is free because of its charitable character. Being held for charitable purposes, it would come within the description of property exempted from taxation for that reason. But it is quite clear that it cannot have the benefit of that privilege while it is in a state of transition and before it has become ultimately vested in the possession of the owner."

<sup>2</sup> *Balch v. Attorney General*, 174 Mass. 144, 54 N. E. 490; *Carter v. Whitecomb*, 74 N. H. 482, 17 L. R. A., N. S., 733, 69 Atl. 779; *Estate of Vassar*, 58 Hun, 378, 12 N. Y. Supp. 203; *Estate of Howell*, 34 Misc. Rep. 40, 69 N. Y. Supp. 505; *Estate of Crouse*, 34 Misc. Rep. 670, 70 N. Y. Supp. 731.

The German Benevolent Society of San Francisco is not subject to the inheritance tax: *Estate of Fretz*, 5 Caf. Pro. 432.

"The organized charities and benevolent agencies which actually relieve human misery, and labor in unselfish devotion to improve the moral and physical condition of mankind, are alike the fruits and aids of good government, and to exempt their property—usually the gifts of the benevolent—from the burdens of taxation is scarcely

observable toward restricting the exemption within narrower bounds than those formerly set.\*

The exemption under the Massachusetts statute of "charitable, educational, or religious societies or institutions, the property of which is exempt by law from taxation," is confined to societies or institutions the property of which is exempt from taxation by the laws of that state.<sup>4</sup> But if a bequest is to an institution whose property is generally exempt from

less the duty than the privilege of the enlightened legislator. Clearly this exemption should be placed upon broad, equitable grounds, quite above the injurious imputations sometimes resulting from individual or special exemptions. We suppose this spirit prevailed in framing the exemptions relating to these charities and benevolent agencies": *Estate of Huntington*, 168 N. Y. 399, 61 N. E. 643, per Justice Landon.

In this case the New York court of appeals holds that the provisions of the tax law of 1896, exempting the property of charitable corporations and associations from taxation, supersede and by implication repeal the provisions of all special acts exempting the property of such corporations and associations, and legacies to them, as well as to all such corporations and associations claiming exemptions under subdivision 7, vesting after chapter 382 of the Laws of 1900, amending article 10 of the tax law, relating to taxes upon transfers of property, took effect, are subject to the transfer tax. See, also, *Estate of Howell*, 34 Misc. Rep. 40, 69 N. Y. Supp. 505.

None of the New York enactments relating to bequests for charitable purposes have brought within the exemption gifts to a person. The addition of the word "association" in the general exemption section does not extend the application to a bequest to trustees: *Estate of Graves*, 66 App. Div. 287, 72 N. Y. Supp. 815.

A bequest to a charitable corporation is taxable unless the provisions of its charter or a special enactment shows an exemption: *Estate of Kavanagh*, 6 N. Y. Supp. 669. But the rule that statutes of exemption are to be strictly construed does not require that only such societies be deemed exempt as are declared to be by their charters; it is enough if the society claiming the exemption belongs to a class exempted by general statute: *Estate of Miller*, 5 Dem. Sur. (N. Y.) 132.

\* *Carter v. Whitcomb*, 74 N. H. 482, 17 L. R. A., N. S., 733, 69 Atl. 779; *Estate of Crouse*, 34 Misc. Rep. 670, 70 N. Y. Supp. 731.

<sup>4</sup> *Minot v. Winthrop*, 162 Mass. 113, 26 L. R. A. 259, 38 N. E. 512; *Rice v. Bradford*, 180 Mass. 545, 63 N. E. 7, applying the rule to a bequest to Bowdoin College in Maine.



taxation, it is not material whether or not the particular gift, when in the hands of the institution, will be exempt from yearly taxation under general laws.\* And the fact that the society may hold some property which is not used directly in carrying on its charitable work, and therefore is subject to general taxation, does not preclude it from claiming exemption from the inheritance tax.\*

Legislative enactments exempting transfers to charities are given a prospective operation; they are not

\* *First Universalist Soc. v. Bradford*, 185 Mass. 310, 70 N. E. 204; *Carter v. Whitcomb*, 74 N. H. 482, 17 L. R. A., N. S., 733, 69 Atl. 779.

\* *Carter v. Whitcomb*, 74 N. H. 482, 17 L. R. A., N. S., 733, 69 Atl. 779. To quote from this case: "Most charitable institutions whose property 'is devoted exclusively to the uses and purposes of public charity,' and is exempt from taxation, may own property not exclusively devoted to charity which is subject to the general tax burden. The use that is made of the property determines the question of its taxability. . . . In consideration of public benefits conferred by such establishments, and in view of the fact that their property is substantially used directly in the promotion of public charity, is unproductive of profit or gain, and is not when so used taxable, it was the policy of the legislature to exempt them from the burden of the inheritance tax. If their general property is exempt from taxation under existing statutes, general or special, bequests to them are not taxable merely because it appears that they own incidentally property that is taxable. Nor does it appear that the legislature intended that a legacy to a charitable association should be subject to the succession tax if, when received, it might be invested in taxable property. The sole test suggested by the language of the statute in its application to the subject matter is to ascertain whether the legatee is a charitable, educational, or religious society, whose property, when used exclusively in carrying out the purposes of the association, is exempt from taxation. It is the character of the institution, the purposes it was organized to accomplish, and its liability or nonliability to taxation from property devoted to those purposes, that determine whether it falls within or without the exception provided in the inheritance tax law. This result accords with the view adopted by the court in *First Universalist Soc. v. Bradford*, 185 Mass. 310, 70 N. E. 204, in which a construction was given to a statute of that state which is identical with the statute in question. With reference to the clause under consideration, the court says: 'But we are of opinion that the ex-

retrospective so as to exempt bequests subject to the inheritance tax at the time of the death of the testator.<sup>7</sup>

"A charity, in a legal sense, may be defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. It is immaterial whether the purpose is called charitable in the gift itself, if it is so described as to show that it is charitable in its nature."<sup>8</sup> It has always been the policy of the law to uphold charitable bequests and give effect to them

emption depends upon the question: Is the society or institution one whose property is generally exempt from taxation? and that the question is not: Is the property which passes to the society or institution one which will be exempt from yearly taxation under general laws? This decision was rendered in 1904; and, as our inheritance tax law of 1905 was evidently copied from the Massachusetts statute, it is not improbable that that construction of the exception was understood by the legislature and adopted as a part of the statute: *Mann v. Carter*, 74 N. H. 345, 15 L. R. A., N. S., 150, 68 Atl. 130. If the legatee would be exempt from taxation upon property directly devoted to its public charity, it is not subject to the inheritance tax, though it in fact may own taxable property at the death of the testatrix, and may intend to invest the proceeds of the legacy in taxable property."

The New Hampshire statute was amended in 1907 so as to restrict the exemption.

<sup>7</sup> *Sherrill v. Christ Church*, 121 N. Y. 701, 25 N. E. 50; *Estate of Wolfe*, 2 Con. 600, 15 N. Y. Supp. 539. See sec. 36, ante.

<sup>8</sup> *Jackson v. Phillips*, 96 Mass. (14 Allen) 539; *Estate of Lennon*, 152 Cal. 327, 125 Am. St. Rep. 58, 14 Ann. Cas. 1024, 92 Pac. 870; *Estate of Graves*, 242 Ill. 23, 134 Am. St. Rep. 302, 17 Ann. Cas. 137, 24 L. R. A., N. S., 283, 89 N. E. 672.

The status of a corporation, as charitable or otherwise, is to be determined by the act of incorporation, not by proof of what it has assumed to do: *Estate of White*, 118 App. Div. 869, 103 N. Y. Supp. 688; *Estate of Moses*, 138 App. Div. 525, 123 N. Y. Supp. 443, 447.

whenever possible, and because the statutes exempt them from the inheritance tax is no reason for departing from or modifying this ancient rule of construction favoring charitable gifts.\*

In determining what is a charity, so that a gift to it will be exempt from inheritance taxation, the law should be liberally construed to promote the benevolent purpose of the exemption.<sup>10</sup> However, to ascertain whether an institution or purpose is charitable within the meaning of the inheritance tax statute, resort should ordinarily be had to the doctrine respecting charitable uses; the objects to which the institution is bound to devote its property must generally be charitable within such doctrine, if it would justly lay claim to exemption from inheritance taxation.<sup>11</sup> But the fact that an institution is charitable within the doctrine of charitable uses will not necessarily exempt gifts to it from the inheritance tax, for in some of the exemptions the term "charitable" has a more restricted meaning than is given it by courts, in their desire to promote benevolent disposition, in the law relating to charitable uses.<sup>12</sup>

It has been decided that the "Woman's Christian Temperance Union" is a benevolent charitable institu-

\* Estate of Graves, 242 Ill. 23, 134 Am. St. Rep. 302, 17 Ann. Cas. 137, 24 L. R. A., N. S., 283, 89 N. E. 672.

<sup>10</sup> Estate of Spangler, 148 Iowa, 333, 127 N. W. 625.

To quote from Justice Ostrander in Estate of Moore, 66 Misc. Rep. 116, 122 N. Y. Supp. 828: "I do not think the legislature ever intended to tax benevolently inclined people for the privilege of making legacies designed to relieve the state of its burdens. No more effectual way of stopping such benevolence could be well devised. While the courts have no power to prevent the legislature from establishing such a . . . policy, they should not by construction impute such an intention in cases where it does not clearly appear."

<sup>11</sup> Estate of Landis, 66 N. J. Eq. 291, 56 Atl. 1039.

<sup>12</sup> Trustees of Young Men's Christian Assn. v. Paterson, 61 N. J. L. 420, 39 Atl. 655; Estate of McCormick, 71 Misc. Rep. 95, 127 N. Y. Supp. 493.

tion exempt from the transfer tax;<sup>13</sup> and also that a Masonic lodge is a charitable institution exempt from inheritance taxation.<sup>14</sup> A bequest to a corporation organized to maintain a home for friendless children and children intrusted to it by parents or committed by competent authority has been held exempt from the New York transfer tax.<sup>15</sup> And a bequest of money to erect in a public park a drinking fountain for horses, in connection with a statue of a certain horse, the statue to bear the donor's name and the name of the horse, with the record of the speed which the horse once made, has been held exempt from the Illinois inheritance tax.<sup>16</sup> In New York it has been decided that the bank clerks' mutual benefit association, incorporated under the act of 1848, takes a bequest subject to the inheritance tax;<sup>17</sup> also that a bequest to Cooper Union is not exempt.<sup>18</sup>

**§ 146. Foreign Charitable Institutions, in General.** It has been contended that the exemption of charitable institutions from inheritance taxation applies to all such institutions, regardless of their location within or without the state granting the exemption, for, it is argued, the exemption is in recognition of the beneficent purpose of these institutions, and, inasmuch as the purpose is common to them all, wherever located, the exemption should be universal. But the courts have not yielded to this argument. They have held, with unanimity it is believed, that, in the absence of

<sup>13</sup> Estate of Moore, 66 Misc. Rep. 116, 122 N. Y. Supp. 828.

<sup>14</sup> Morrow v. Smith, 145 Iowa, 514, Ann. Cas. 1912A, 1183, 124 N. W. 316.

<sup>15</sup> Estate of Higgins, 55 Misc. Rep. 175, 106 N. Y. Supp. 465.

<sup>16</sup> Estate of Graves, 242 Ill. 23, 134 Am. St. Rep. 302, 17 Ann. Cas. 137, 24 L. R. A., N. S., 283, 89 N. E. 672.

<sup>17</sup> Estate of Jones, 50 Hun, 603, 22 Abb. N. C. 50, 2 N. Y. Supp. 671.

<sup>18</sup> Estate of Kucielski, 144 App. Div. 100, 128 N. Y. Supp. 768.

any language plainly indicative of a different intent, the legislature must be deemed to have made the exception for the benefit of its own institutions only, and that foreign corporations, or institutions without the state, must pay the inheritance tax, although exempt in the state of their domicile,<sup>19</sup> and although some of their charitable work and enterprises are carried on within the state enforcing payment of the tax.<sup>20</sup>

"We are of the opinion," to quote from the New York court of appeals, "that the statute of a state granting powers and privileges to corporations must, in the absence of plain indications to the contrary, be held to apply only to corporations created by the state, and over which it has the power of visitation and control. Such is the natural interpretation of such

<sup>19</sup> *Minot v. Winthrop*, 162 Mass. 113, 26 L. R. A. 259, 38 N. E. 512; *Pierce v. Stevens*, 205 Mass. 219, 91 N. E. 319; *Davis v. Stevens*, 208 Mass. 343, 94 N. E. 556; *Alfred University v. Hancock*, 69 N. J. Eq. 470, 46 Atl. 178; *Estate of McCoskey*, 6 Dem. Sur. (N. Y.) 438, 22 Abb. N. C. 20, 1 N. Y. Supp. 782; *Estate of Twigg*, 15 N. Y. Supp. 548; *Estate of James*, 6 Misc. Rep. 206, 27 N. Y. Supp. 288; *Estate of Smith*, 77 Hun, 134, 28 N. Y. Supp. 476; *Estate of Fayerweather*, 31 Abb. N. C. 287, 30 N. Y. Supp. 273; *Estate of Taylor*, 80 Hun, 539, 30 N. Y. Supp. 582; *Estate of Wolfe*, 23 Misc. Rep. 439, 52 N. Y. Supp. 415; *Catlin v. Trustees of Trinity College*, 113 N. Y. 133, 3 L. R. A. 206, 20 N. E. 864; *Estate of Balleis*, 144 N. Y. 132, 38 N. E. 1007; *Humphreys v. State*, 70 Ohio St. 67, 101 Am. St. Rep. 888, 1 Ann. Cas. 233, 65 L. R. A. 776, 70 N. E. 957; *Estate of Hickok*, 78 Vt. 259, 6 Ann. Cas. 578, 62 Atl. 724.

Whether a corporation of a foreign state may claim exemption in New Jersey under the supplement of 1898 depends upon whether it has actually acquired corporate powers for purposes and objects which entitle to such exemption; that the legislation under which incorporation was obtained permitted the acquisition of corporate powers for objects which would have exempted will be of no avail: *Estate of Rothchild*, 71 N. J. Eq. 10, 63 Atl. 615, affirmed, 72 N. J. Eq. 425, 65 Atl. 1118.

<sup>20</sup> *Humphreys v. State*, 70 Ohio St. 67, 101 Am. St. Rep. 888, 1 Ann. Cas. 233, 65 L. R. A. 776, 70 N. E. 957. But it has been held that a gift to a local branch of the Salvation Army to be expended within the state for the erection of a hall for the branch and the care of sick and disabled members, is exempt, although the Salvation Army is organized under the laws of another state.

legislation in the absence of a contrary intention appearing on the face of the act. The legislature in such cases is dealing with its own creations, whose rights and obligations it may limit, define and control. . . . It is the policy of society to encourage benevolence and charity. But it is not the proper function of a state to go outside of its own limits, and devote its resources to support the cause of religion, education, or missions for the benefit of mankind at large. The argument may have force that the state might, consistently with its proper function, give immunity from taxation to some of the foreign corporations engaged in the work of education or charity. But, however this may be, we are convinced that the statute of 1891 has no application to foreign corporations, and, having reached that conclusion, our duty is ended.”<sup>21</sup> This doctrine has been approved by the New Hampshire and New Jersey courts.<sup>22</sup>

The fact that a domestic corporation expends money for charitable purposes and extends the field of its usefulness beyond the boundaries of the state does not render it liable to the inheritance tax, under the rule that foreign corporations do not enjoy the immunity

<sup>21</sup> *Estate of Prime*, 136 N. Y. 347, 18 L. E. A. 713, 32 N. E. 1091, per Justice Andrews.

<sup>22</sup> *Alfred University v. Hancock*, 69 N. J. Eq. 470, 46 Atl. 178; *Carter v. Whitecomb*, 74 N. H. 482, 17 L. E. A., N. S., 733, 69 Atl. 779.

In *Estate of Jones*, 73 N. J. Eq. 353, 67 Atl. 1035, 74 N. J. Eq. 447, 70 Atl. 1101, it was held that institutions of another state, whose object was to furnish instruction to young men destined for the ministry in a certain religious denomination, and a society (of what state does not appear) whose only purpose was the extension of gospel preaching, were entitled to the exemptions provided by the collateral inheritance tax statute in favor of religious institutions “not confined in their operations and benefactions to local or state purposes, but for the general good of the people interested therein,—whether . . . organized under the laws of this state, or . . . under the laws of some other state.”

from such tax that domestic corporations do."<sup>22</sup> But if the principal purpose of an institution, though it is affiliated with a local concern existing within the jurisdiction imposing the tax, is to carry on charitable operations abroad, as in the case of a foreign missionary society connected with a local church, such an institution is not exempt from inheritance taxation.<sup>22a</sup>

<sup>22</sup> *Balch v. Attorney General*, 174 Mass. 144, 54 N. E. 490; *Estate of Lyon*, 144 App. Div. 104, 128 N. Y. Supp. 1004, holding a bequest to "the American Baptist Missionary Union (Boston, Mass.)" was to a domestic corporation and not subject to the transfer tax.

In *Carter v. Story* (N. H.), 78 Atl. 1072, the court—in holding that a legacy to a corporation, chartered to promote foreign and domestic missions, to educate indigent young men, and further other religious charities, is exempt from the inheritance tax, if the corporation has not operated beyond the state and desires to limit its work to the state—said: "The legacies to the Baptist convention are not chargeable with that tax or burden, unless, as claimed by the state, the convention holds the income for the purpose of religious and charitable uses in other jurisdictions as well as in this state. Though its corporate powers are broad enough to authorize the use of its funds in the promotion of religious and charitable objects in other states and countries, the practical administration of its affairs may show as a matter of fact that it devotes the whole or a large part of its funds to local uses; and, if it does, a legacy to it unlimited as to the uses that may be made of it, except by its corporate powers, is not subject to the inheritance tax, according to the decision in *Carter v. Whitcomb*, 74 N. H. 482, 490, 491, 17 L. R. A., N. S., 733, 69 Atl. 779."

<sup>22a</sup> *Carter v. Whitcomb*, 74 N. H. 482, 17 L. R. A., N. S., 733, 69 Atl. 779. Said the court in this case: "If its charity is administered for the benefit of the public within this jurisdiction, it falls within the class which the legislature intended to favor and encourage. When, however, an auxiliary body, like the Auxiliary of the Woman's Foreign Missionary Society, though connected with a local church and existing within the jurisdiction as an association, seeks as its principal object 'the evangelization of heathen women' and the raising of funds for that purpose alone, it is difficult to discover how the public represented by the people of this state is benefited by the supposed benevolence. Even if there are 'heathen women' in our midst, this society can do nothing for their enlightenment and civilization; for, as found in the case, none of its funds 'are or can be devoted to charitable objects within the state of New Hampshire.' Its money may be sent, and presumably the principal part of it is sent, to assist in the conversion of people living in remote parts of

**§ 147. Foreign Charities—Constitutionality of Discrimination.**—Statutes denying foreign charitable corporations exemption from inheritance taxation, while conferring such exemption on domestic charitable corporations, have been attacked as unconstitutional, in that they unlawfully discriminate against foreign corporations, deny them the equal protection of the law, and abridge the privileges or immunities of citizens of the United States. But corporations are not “citizens” within the meaning of the provision of the federal constitution that the citizens of each state shall be entitled to all the privileges and immunities of the citizens of the several states. And there are substantial reasons for putting foreign corporations in a less favored class than domestic corporations, although both are engaged in the same general purpose—dispensing charity. While no difference is observable between them as to their general purpose, the sphere of their operations and the resulting benefits obviously do not coincide. Moreover, domestic corporations are under the control of the state creating them, while foreign corporations are beyond its jurisdiction. The constitutional objections to imposing an inherit-

the earth from their native religion to that of Christianity. The expenditure of large sums of money for the enlightenment upon religious subjects of the natives of the antipodes evidently was not one of the objects the legislature intended to encourage, when, in 1895, the property of charitable associations ‘devoted exclusively to the uses and purposes of public charity’ was exempted from taxation, or when, in 1905, legacies to such associations ‘in this state’ were exempted from the inheritance tax. The benefit to the public of this state of such a trust is so visionary, problematical, and uncertain that it cannot be deemed for the purposes of this case a public charity, without imputing to the legislature motives which it is reasonably certain they did not entertain. The state is not itself a charitable institution, and does not authorize its representatives to expend the public money, by exemptions from taxation or otherwise, for purposes having little or no relation to the welfare of the inhabitants of the state. The purpose of such laws is the acquisition of some supposed public advantage.”



ance tax on foreign charitable corporations and exempting domestic charitable corporations therefrom are untenable,<sup>24</sup> although the foreign corporations are to some extent operating within the state.<sup>25</sup>

§ 148. **Educational Institutions.**—Bequests to educational institutions, such as colleges<sup>26</sup> or public schools,<sup>27</sup> have been subject to the inheritance tax in some jurisdictions where the statutes make no exception in favor of charitable or educational institutions. However, gifts for the promotion of education are, in a legal sense, charitable, when the element of private gain is absent. But in order that an educational society may claim exemption from inheritance taxation as charity, it has been said that it will not be sufficient to show that the society is incorporated under the laws permitting the incorporation of societies for the promotion of learning; it must be shown that the

<sup>24</sup> *Estate of Speed*, 216 Ill. 23, 108 Am. St. Rep. 189, 74 N. E. 809, affirmed, *Board of Education of Kentucky Annual Conference of Methodist Episcopal Church v. Illinois*, 203 U. S. 553, 8 Ann. Cas. 157, 51 L. Ed. 314, 27 Sup. Ct. Rep. 171. Said the Illinois court in this case, and the language was approved by the supreme court of the United States: "A clear distinction exists between domestic corporations and corporations organized under the laws of other states. Such corporations fall naturally into their respective classes. Over the one—that which the state has created—the state has certain powers of control, and the other is beyond its jurisdiction. Those of its own creation have been endowed with corporate powers for the purpose of subserving the interests of the state and its people; those which have been given life by the laws of a sister state have entirely different ends and objects to accomplish. The law-making power would find many weighty considerations authorizing the classification of foreign and domestic corporations into different classes, and justifying the creation of liability on the part of foreign corporations to pay a tax on the right to take property by descent, devise or bequest, under the laws of the state, and at the same time leaving the right of a domestic corporation so to take free of any such exaction."

<sup>25</sup> *Humphreys v. State*, 70 Ohio St. 67, 101 Am. St. Rep. 888, 1 Ann. Cas. 233, 65 L. R. A. 776, 70 N. E. 957.

<sup>26</sup> *Barringer v. Cowan*, 55 N. C. 436.

<sup>27</sup> *Leavell v. Arnold*, 131 Ky. 426, 115 S. W. 232.

property thereof is in fact devoted to such purposes, and has an educational character.<sup>28</sup>

Educational corporations or institutions are expressly exempted by some statutes from the inheritance tax. When such is the case, the meaning of the term "educational" is at once brought in issue. The courts have been disposed to construe the word in its broad sense. It "is not used in its meaning of instruction by school, college or university, which is a narrower and more limited meaning of the word, but in its broader signification as the act of developing and cultivating the various physical, intellectual, and moral faculties toward the improvement of the body, the mind, and the heart."<sup>29</sup> Hence a public library,<sup>30</sup> art gallery,<sup>31</sup> museum and library of art,<sup>32</sup> the Young Men's Christian Association, the Young Women's

<sup>28</sup> *Alfred University v. Hancock*, 69 N. J. Eq. 470, 46 Atl. 178; *Estate of Landis*, 66 N. J. Eq. 291, 56 Atl. 1039.

<sup>29</sup> *Estate of Moses*, 138 App. Div. 525, 123 N. Y. Supp. 443. To the same effect, see *Estate of Field*, 71 Misc. Rep. 396, 130 N. Y. Supp. 195; *Mount Hermon Boys' School v. Gill*, 145 Mass. 139, 13 N. E. 354.

In *Estate of Crouse*, 34 Misc. Rep. 670, 70 N. Y. Supp. 731, it is said that under Laws of 1896, chapter 908, as amended by Laws of 1900, chapter 382, a corporation is no longer exempt from the transfer tax, if organized for educational purposes only.

That Vassar College is exempt from the inheritance tax, see *Estate of Vassar*, 127 N. Y. 1, 27 N. E. 394.

In *Estate of Landis*, 66 N. J. Eq. 291, 56 Atl. 1039, it is held that a society "to collect and preserve historical and current accounts of events, persons, and inventions, scientific investigations, and photographs, drawings, models, and specimens, and all other materials of a similar character connected with the interests of Vineland," does not possess an educational character.

<sup>30</sup> *Inhabitants of Essex v. Brooks*, 164 Mass. 79, 41 N. E. 119; *Estate of Lenox*, 9 N. Y. Supp. 895; *Estate of Higgin*, 55 Misc. Rep. 175, 106 N. Y. Supp. 465. But see *Estate of Francis*, 121 App. Div. 129, 105 N. Y. Supp. 643, affirmed, 189 N. Y. 554, 82 N. E. 1126.

<sup>31</sup> *Estate of Arnot*, 71 Misc. Rep. 390, 130 N. Y. Supp. 197.

<sup>32</sup> *Estate of Mergentime*, 129 App. Div. 367, 113 N. Y. Supp. 948, affirmed, 195 N. Y. 572; 88 N. E. 1125. But see *Estate of Vanderbilt*, 2 Con. 319, 10 N. Y. Supp. 239; *Estate of Wolfe*, 15 N. Y. Supp. 539.

Christian Association,<sup>33</sup> and the Women's Temperance Union,<sup>34</sup> have been regarded as educational institutions entitled to exemption.

**§ 149. Religious Institutions.**—Churches and religious societies or corporations are, like other charities, subject to the inheritance tax,<sup>35</sup> except when, as is now generally the case, they are expressly exempt by the statute.<sup>36</sup> Where the exemption exists, it can be asserted in favor of gifts in trust to the use of religious institutions, as well as in behalf of absolute gifts.<sup>37</sup> It has been decided that a corporation organ-

<sup>33</sup> *Estate of Moses*, 138 App. Div. 525, 123 N. Y. Supp. 443.

<sup>34</sup> *Estate of Field*, 71 Misc. Rep. 396, 130 N. Y. Supp. 195.

<sup>35</sup> *Estate of Kavanagh*, 6 N. Y. Supp. 669; *Barringer v. Cowan*, 55 N. C. 436. In *Catlin v. Trustees of Trinity College*, 113 N. Y. 133, 3 L. R. A. 206, 20 N. E. 864, it was decided that legacies to religious colleges and societies, not exempted from taxation by charter or special laws, were liable to the collateral inheritance tax under the law of 1887, subjecting to its provisions all property which shall pass by will to any "body politic or corporate . . . other than . . . the societies, corporations and institutions now exempted by law from taxation."

<sup>36</sup> *Carter v. Whitcomb*, 74 N. H. 482, 17 L. R. A., N. S., 733, 69 Atl. 779, holding that a statute exempting religious societies from the operation of the succession tax is not repealed by its re-enactment with a proviso that such societies shall be so exempt only when they are bound to devote the property received solely to such uses that the property would, by law, be exempt from taxation.

In *Estate of Wolfe*, 2 Con. 600, 15 N. Y. Supp. 539, it was held that Grace Church was not exempt.

In *Sherrill v. Christ Church*, 121 N. Y. 701, 25 N. E. 50, it was held that a legacy to a certain church corporation "toward the building of a new church or the renovation of the present one" was subject to the collateral inheritance tax of 1885.

In *First Universalist Society v. Bradford*, 185 Mass. 310, 70 N. E. 204, it is decided that the rule that a devise or bequest to a religious society is not subject to the succession tax applies to a devise to a religious society of a dwelling-house for a parsonage, which would be taxable to the society when used for that purpose.

<sup>37</sup> *Carter v. Eaton*, 75 N. H. 560, 78 Atl. 643; *Carter v. Story* (N. H.), 78 Atl. 1072. In these cases the testamentary gifts to churches were in trust, the income to be used for church purposes only.

ized to provide churches and clergymen for seamen in the city of New York is a religious corporation, so that a bequest to it is exempt from the transfer tax, although its charter enables it to keep a seamen's boarding-house.<sup>38</sup> It has also been decided that a gift to a local branch of the Salvation Army, for the purpose of erecting a hall for the branch in the state and caring for sick and disabled members, is exempt.<sup>39</sup> The New York Yearly Meeting of Friends comes within the exemption of the New Jersey statute in favor of Bible or tract societies, religious organizations, boards of the church or organizations thereof, "not confined in their operations and benefactions to local or state purposes."<sup>40</sup>

In New Hampshire societies and organizations connected with a church, whose purposes are religious, educational, and philanthropic, such as the Young Women's Christian Association, the Women's Auxiliary to the Young Men's Christian Association, a home for aged women, the Women's Relief Corps of the Grand Army of the Republic, are charitable organizations within the meaning of a statute exempting such organizations from the succession tax.<sup>41</sup> It has also been held in New Hampshire that a bequest of income to a corporation chartered to promote missions, educate young men for the ministry, and further other religious charities is not subject to the inheritance tax.<sup>42</sup>

But in New York it has been held that missionary societies and Young Men's Christian Associations are not "religious corporations" within the meaning of

<sup>38</sup> *Estate of Prall*, 78 App. Div. 301, 79 N. Y. Supp. 971.

<sup>39</sup> *Estate of Crawford*, 148 Iowa, 60, 126 N. W. 774.

<sup>40</sup> *State v. New York Yearly Meeting of Friends*, 61 N. J. Eq. 620, 48 Atl. 227.

<sup>41</sup> *Carter v. Whitecomb*, 74 N. H. 482, 17 L. R. A. 733, 69 Atl. 779.

<sup>42</sup> *Carter v. Story* (N. H.), 78 Atl. 1072.

the exemptions provided in the transfer tax law.<sup>43</sup> However, the view has been taken by the supreme court of New York that the Young Men's Christian Association and the Young Women's Christian Association fall within the term "educational" as used in the exemption provision of the statute.<sup>44</sup>

A bequest to a named bishop, "or to his living successor, to be used in his African mission work," is, in the event of the bishop's death, a gift to "his living successor" personally, not to a corporation sole in its ecclesiastical and official capacity, and is exempt by the provision of the New York statute of 1892 which excepts from the transfer tax "any property heretofore or hereafter devised or bequeathed to any person who is a bishop, or to any religious corporation." And the fact that the "living successor" is a resident of New Jersey, and consequently not a domestic bishop, does not alter the rule.<sup>45</sup> The purpose of this exemption appears to be to except from the transfer tax property given to religious corporations, whether held in the name of the corporation itself, or, as is the custom in some denominations, in the name of one of the heads of the church. The statute uses only the word "bishop," but it seems to cover a gift to "an archbishop or the cardinal archbishop, in his official

<sup>43</sup> Estate of Watson, 171 N. Y. 256, 63 N. E. 1109; In re Board of Home Missions, 58 Hun, 116, 11 N. Y. Supp. 311; Estate of Fay, 47 Misc. Rep. 532, 76 N. Y. Supp. 62; Estate of White, 118 App. Div. 869, 103 N. Y. Supp. 688. Said Justice Werner, in the Watson case above, "it is apparent that the legislature, in speaking of religious corporations, has never intended to include within that term any of the numerous benevolent, charitable, philanthropic and missionary organizations created either under special laws or under the general statutes repealed by the membership corporations law."

In Estate of McCormick, 71 Misc. Rep. 95, 127 N. Y. Supp. 493, the American Baptist Publication Society is held not exempt from the transfer tax law.

<sup>44</sup> Estate of Moses, 138 App. Div. 525, 123 N. Y. Supp. 443.

<sup>45</sup> Estate of Palmer, 33 App. Div. 307, 53 N. Y. Supp. 847, affirmed, 158 N. Y. 669, 52 N. E. 1125.

capacity, as they are all unquestionably bishops, as well as the religious and temporal heads of their church." <sup>46</sup>

§ 150. **Institutions for Support of the Aged or Indigent.**—Taking the view that an exemption in favor of charitable institutions should be construed liberally to promote its benevolent purpose, and that an institution, in order to be charitable within the meaning of the exemption, need not devote itself exclusively to such work, the Iowa court has concluded that a testamentary gift of the use and profits of real estate in perpetuity to the dependent poor of a county, and constituting the board of supervisors of the county trustees to carry the gift into effect, is a gift to a "charitable institution" and as such exempt from the inheritance tax. The county, being thus charged with the duty of relieving and supporting the poor, is to that extent a charitable organization, and a gift made specifically in aid of this feature of its work is to all reasonable intents and purposes a gift to or for a charitable institution. <sup>47</sup>

A home for aged women, although its beneficiaries are required to pay a sum for admission and turn over to it the property they possess, is a charitable organization within the meaning of the New Hampshire statute exempting such organizations from the succession tax. And a home for aged men has been held exempt from the New York collateral inheritance tax, as a charitable institution or almshouse, notwithstanding applicants are required to pay a fee and turn over their property to the home. <sup>48</sup>

<sup>46</sup> Estate of Kelly, 29 Misc. Rep. 169, 60 N. Y. Supp. 1005.

<sup>47</sup> Estate of Spangler, 148 Iowa, 333, 127 N. W. 625.

<sup>48</sup> Carter v. Whitcomb, 74 N. H. 482, 17 L. R. A., N. S., 733, 69 Atl. 779; Estate of Vassar, 127 N. Y. 1, 27 N. E. 394. But compare Estate of Keech, 57 Hun, 588, 11 N. Y. Supp. 265.

Where a testator gave his residuary estate to trustees "for the purpose of founding, erecting and maintaining" a "home for the aged," the residuary estate to remain in the hands of the trustees until the termination of two lives in being, the estate, although actually within the hands of the trustees thereof, may properly be considered as in the possession of a corporation or association already formed under the will, or as in the control of the supreme court, for the purpose of carrying out the charitable scheme of the testator, and therefore is, under the provisions of the New York tax law of 1896 in force at the time of his death, read in connection with the provisions of chapter 701 of the Laws of 1893, exempt from the transfer tax, as the "property of an association organized exclusively for . . . charitable . . . and . . . benevolent purposes." The amendment of 1900, making the general exemptions provided for in section 4 inapplicable to taxable transfers, has no application.<sup>49</sup>

Corporations organized for the purpose of supporting and educating indigent persons, so that their property is not subject to taxation, have, in a number of cases, been regarded as exempt from the operation of the New York inheritance tax statute.<sup>50</sup> An association which dispenses benefits to the poor without charge, and maintains a place where money is disbursed to the needy, but has no house where they are lodged, is not subject to a legacy tax. It is an almshouse—a pure charity.<sup>51</sup> An institution for the blind, free to patients, is an almshouse, and bequests to it are not subject to the legacy tax.<sup>52</sup> But it has been

<sup>49</sup> Estate of Graves, 171 N. Y. 40, 63 N. E. 787.

<sup>50</sup> Church Charity Foundation, 6 Dem. Sur. (N. Y.) 154; Estate of Hunter, 11 N. Y. St. Rep. 704; Estate of Herr, 55 Hun, 167, 7 N. Y. Supp. 852; Estate of Neale, 57 Hun, 591, 10 N. Y. Supp. 713.

<sup>51</sup> Estate of Lenox, 9 N. Y. Supp. 895.

<sup>52</sup> Estate of Underhill, 2 Con. 262, 20 N. Y. Supp. 134.

thought that a home for aged women is not an almshouse and exempt from the legacy tax, if it charges board for the persons admitted to it. "I have repeatedly held," said Justice Ranson, "that where inmates of such institutions are required to pay for any of the benefits received, the institution is not an almshouse, not being appropriated wholly for the poor, and is therefore subject to the tax."<sup>53</sup> The same justice has decided that an institution which maintains a home and provides meals and lodgings free, but which charges for maintaining a day nursery, is not a pure charity and not exempt as an almshouse from the legacy tax.<sup>54</sup>

A legacy to the New England Trust Company of Boston, "the interest of which they will pay to needy aged men and women who had been in better circumstances in early life but had become in want when in old age," is not to or for a charitable institution within the meaning of the Massachusetts collateral inheritance tax law of 1891.<sup>55</sup>

**§ 151. Hospitals and Infirmaries.**—An institution incorporated for no private gain, but for the care and medical treatment of the sick without profit to the founders, and for that purpose made the holder or manager of a donated trust fund, is a charitable corporation in the legal sense of that term.<sup>56</sup> And the fact that such patients as are able to pay are required

<sup>53</sup> *Estate of Lenox*, 9 N. Y. Supp. 895.

<sup>54</sup> *Estate of Vanderbilt*, 2 Con. 319, 10 N. Y. Supp. 239.

<sup>55</sup> *Hooper v. Shaw*, 176 Mass. 190, 57 N. E. 361.

<sup>56</sup> *Hearnes v. Waterbury Hospital*, 66 Conn. 98, 31 L. R. A. 224, 33 Atl. 595; *McDonald v. Massachusetts General Hospital*, 120 Mass. 432, 21 Am. Rep. 529; *Downes v. Harper Hospital*, 101 Mich. 555, 45 Am. St. Rep. 427, 25 L. R. A. 602, 60 N. W. 42; *Pepke v. Grace Hospital*, 130 Mich. 493, 90 N. W. 278; *Murtaugh v. St. Louis*, 44 Mo. 479. These decisions do not discuss the question of inheritance taxation, but the liability of a hospital for the negligence of its agents.



to do so has been thought not to deprive the institution of its character as a charity, if the income from such source is not a matter of private gain but is used in defraying the expenses of the hospital and is itself thereby stamped with the impress of charity.<sup>57</sup>

Therefore, it would not be unreasonable to hold that when a hospital is conducted along lines of benevolence, not for purposes of profit or financial gain, bequests to it should be exempt from the inheritance tax, if the statute exempts from its operation charitable and benevolent institutions. In New York hospitals have enjoyed exemption when the statute exempts their property from taxation, and the inheritance tax law excepts from its operation "the societies, corporations and institutions now exempted by law from taxation."<sup>58</sup>

The New York statute now exempts testamentary gifts to hospital or infirmary corporations which possess no element of private or corporate gain and are conducted exclusively for the purpose avowed. Under this statute a bequest to the Craig Colony of Epileptics has been held exempt, notwithstanding the patients work on the premises to grow food or make products to be sold by the state to obtain necessities to support the colony.<sup>59</sup>

<sup>57</sup> *Jensen v. Maine Eye & Ear Infirmary*, 107 Me. 408, 78 Atl. 898; *Downes v. Harper Hospital*, 101 Mich. 555, 45 Am. St. Rep. 427, 25 L. R. A. 602, 60 N. W. 42; *Gable v. Sisters of St. Francis*, 227 Pa. 254, 136 Am. St. Rep. 879, 75 Atl. 1087; *Powers v. Massachusetts Homeopathic Hospital*, 109 Fed. 294, 47 C. C. A. 122, 65 L. R. A. 372. But see *University of Louisville v. Hammock*, 127 Ky. 564, 128 Am. St. Rep. 355, 14 L. R. A., N. S., 784, 106 S. W. 219. In these decisions the liability of hospitals for the negligence of its agents is involved, not the liability to inheritance taxation.

<sup>58</sup> *Will of Vassar*, 127 N. Y. 1, 27 N. E. 394; *Estate of Kimberly*, 27 App. Div. 470, 50 N. Y. Supp. 586; *Estate of Higgins*, 55 Misc. Rep. 175, 106 N. Y. Supp. 465; *Estate of Vanderbilt*, 2 Con. 319, 10 N. Y. Supp. 239.

<sup>59</sup> *Estate of Moore*, 66 Misc. Rep. 116, 122 N. Y. Supp. 828, affirmed, 143 App. Div. 910, 128 N. Y. Supp. 1135.

A bequest to a home for consumptives, the inmates of which are supported by charity, has been held not liable to the New York legacy tax.<sup>60</sup> And a bequest to a hospital for the care and treatment of the indigent sick and disabled is exempt as a gift to an almshouse.<sup>61</sup>

**§ 152. Cemetery Association.**—A bequest to a cemetery corporation of another state, the interest to be used for the purpose of keeping the testator's "lot in good condition forever," has recently been held subject to the New York transfer tax.<sup>62</sup> This holding

<sup>60</sup> Will of Herr, 57 Hun, 591, 10 N. Y. Supp. 680.

<sup>61</sup> Estate of Curtiss, 1 Con. 471, 7 N. Y. Supp. 207.

<sup>62</sup> Estate of Fay, 62 Misc. Rep. 154, 116 N. Y. Supp. 423. Said the court in this case: "In Matter of Vinot's Estate, 7 N. Y. Supp. 517, Surrogate Ransom held that a bequest of one thousand dollars to an association, the income of which was to be applied to the care and preservation of the burial plot of a decedent, was not taxable. As this decision has not been overruled by a higher court, it might be considered as a controlling authority in this case. In view, however, of the language of the court of appeals in the Gould case, 156 N. Y. 423, 51 N. E. 287, and of the appellate division in the McAvoy case, 112 App. Div. 377, 98 N. Y. Supp. 437, it would appear that the decision in the Matter of Vinot would scarcely meet with the approval of the appellate courts at the present time. In the Gould case it was held that the property was taxable, although bequeathed for the purpose of satisfying a contractual obligation existing at the time of decedent's death; and in the McAvoy case it was held that the bequest was taxable, although the beneficiary received it in payment of services to be rendered hereafter. While it has been held that a sum spent by an executor in the erection of a monument to decedent is exempt (Matter of Edgerton's Estate, 35 App. Div. 125, 54 N. Y. Supp. 700), and that a reasonable sum spent in the purchase of a burial plot for decedent may be regarded as a part of the funeral expenses and therefore a proper deduction (Matter of Liss' Estate, 39 Misc. Rep. 123, 78 N. Y. Supp. 969), there is a manifest distinction between such expenditures made by an executor in his discretion and a bequest made by decedent in his last will to a certain beneficiary and for a certain specific purpose. In the latter case the property passes to the beneficiary, by virtue of the provisions in decedent's will, and as the statute provides that all property passing by will (if not going to parties specifically mentioned as being exempt) is taxable, the bequest to the Mt. Auburn Cemetery Association would seem to be taxable."

seems to be in conflict with a prior decision in the same state."<sup>63</sup>

**§ 153. Masses for Repose of Souls.**—It has once been affirmed in New York that a bequest to the Roman Catholic church for masses to be read for the repose of the soul of the testatrix is exempt from the transfer tax.<sup>64</sup> But on another occasion it was decided that a bequest to executors in trust to expend for masses for the repose of the soul of the testatrix and her husband was subject to the tax imposed by the collateral inheritance act.<sup>65</sup> On a subsequent occasion it was held that a direction to executors to expend, in their discretion, a certain sum for masses for the repose of the soul of the testatrix was a gift to the executors for a religious use upon a valid and effectual trust, and that the transfer should be taxed at the rate of five per cent.<sup>66</sup> A mass is not necessarily a part of the funeral service, and hence a bequest to a priest to say masses is not exempt from the transfer tax as a funeral expense.<sup>67</sup>

Bequests for masses have been pronounced for charitable purposes in California, and therefore held exempt from the inheritance tax.<sup>67a</sup>

**§ 154. Societies for Prevention of Cruelty.**—Bequests for the benefit of a society for the prevention of cruelty to animals are for a public charity.<sup>68</sup> An in-

<sup>63</sup> Estate of Vinot, 7 N. Y. Supp. 517. For Pennsylvania decisions on this question, see Hurst v. Cookman, 1 Lanc. Law Rev. 60; Estate of Walters, 1 Pa. Co. Ct. Rep. 447; Estate of Long, 22 Pa. Super. Ct. 370.

<sup>64</sup> Estate of Didion, 54 Misc. Rep. 201, 105 N. Y. Supp. 924.

<sup>65</sup> Estate of Black, 1 Con. 477, 5 N. Y. Supp. 452.

<sup>66</sup> Estate of Eppig, 63 Misc. Rep. 613, 118 N. Y. Supp. 683.

<sup>67</sup> Estate of McAvoy, 112 App. Div. 377, 98 N. Y. Supp. 437.

<sup>67a</sup> Estate of Herzo, 2 Cof. Pro. Dec. 165.

<sup>68</sup> Minns v. Billings, 183 Mass. 126, 97 Am. St. Rep. 420, 5 L. R. A., N. S., 686, 66 N. E. 593.

stitution whose purpose is so laudable and humane, and therefore so worthy of encouragement, is quite as much entitled to exemption from the inheritance tax as many other charities that enjoy such exemption. But in New York, though the decision was rendered nearly a quarter of a century ago, it was decided that a bequest to a society for the prevention of cruelty to animals was subject to the legacy tax.<sup>69</sup> And recently it has been held in that state that a testamentary gift to a society for the prevention of cruelty to children is not exempt from the transfer tax.<sup>70</sup>

<sup>69</sup> *Estate of Keith*, 1 Con. 370, 5 N. Y. Supp. 201.

<sup>70</sup> *Estate of Moses*, 138 App. Div. 525, 123 N. Y. Supp. 443.

## CHAPTER X.

## CIRCUMSTANCES AFFECTING LIABILITY FOR TAX.

- § 158. Compromise of Will Contest or Litigation—Pennsylvania Decisions.
- § 159. Compromise of Will Contest—Illinois Decisions.
- § 160. Compromise of Will Contest—New York Decisions.
- § 161. Compromise of Will Contest—Iowa Decisions.
- § 162. Compromise of Will Contest—Massachusetts Decisions.
- § 163. Compromise of Will Contest—Other Decisions.
- § 164. Renunciation or Waiver of Legacy.
- § 165. Compensation to Executor or Trustee.

§ 158. **Compromise of Will Contest or Litigation—Pennsylvania Decisions.**—A compromise of litigation or of a will contest cannot be resorted to as a mere device for evading the payment of an inheritance tax; for courts look beyond the form of any arrangement, whereby the commonwealth is deprived of a tax, to its substance to ascertain its real purpose. Hence an agreement to set aside a will and to make distribution in accordance with its provisions or otherwise will not relieve legacies otherwise taxable from the burden which the law imposes upon them. But the view prevails in Pennsylvania that money paid in good faith in compromise of threatened litigation or of a will contest is not subject to the legacy tax.<sup>1</sup>

It has been decided in that state that the collateral inheritance tax is not payable on the money which legatees, who are collaterals, authorized the executor

<sup>1</sup> Estate of Hawley, 214 Pa. 525, 6 Ann. Cas. 572, 63 Atl. 1021. In Appeal of Commonwealth, 34 Pa. 204, the testator devised his entire estate to his executors in trust for legatees and devisees; the widow declined to take her legacy, but afterward, by an arrangement with the executors approved by the court, accepted a sum less than her share of the estate and relinquished her claim to the residue. It was held that she took this sum under her paramount title as a widow, not out of the fund bequeathed in trust, and therefore that it was not subject to the collateral inheritance tax.

to pay to a disinherited son of the decedent, in pursuance of a compromise by which the son's caveat was withdrawn and the will admitted to probate;<sup>2</sup> and that such tax cannot be imposed upon money paid to extinguish the title of persons who claim adversely to the decedent, or upon property surrendered by way of compromise to persons who so claim.<sup>3</sup> The theory of the first of these decisions appears to be that the portion of the estate that passed to the son was never accepted by the legatees, and that a bequest is not effectual without acceptance. In the second decision the court declared that "no liberality of construction can extend the language of the statute so as to make it include either moneys paid to extinguish the title of persons claiming adversely to the decedent, whose estate is liable to taxation, or property surrendered by way of compromise to persons so claiming, and thus never forming part of decedent's estate at all."

**§ 159. Compromise of Will Contest—Illinois Decisions.**—The Illinois court has declined to assent to the

<sup>2</sup> Estate of Pepper, 159 Pa. 508, 28 Atl. 253. In this case the will gave the estate to collateral kindred and strangers, and to avoid a contest they yielded a portion of the estate to a son. The issue was whether this portion was subject to a tax. In deciding in the negative, the court said: "We have reached the conclusion that under the most favorable construction of the act, so far as respects the contention on behalf of the commonwealth, they are not so liable, and for the reason that the amount paid caveator was never received by them as legatees, and under the act it is only so much of the estate which actually passes to them by virtue of the will that is liable to the tax. It will readily be seen, if the contest instituted by the caveator had been successful, he would be entitled under the intestate law to the entire estate, and freed from the tax; but, instead of further litigation, he accepted a portion of the estate, relinquished his claim to the balance, and thus, of course, reduced the amount passing to the legatees, and, in fact, to the extent of the amount he received, the will is a nullity, so that all the legatees take is the amount of their bequests after deducting the sum paid the caveator and this they concede is subject to the tax."

<sup>3</sup> Estate of Kerr, 159 Pa. 512, 28 Atl. 354.

reasoning and conclusion of these two Pennsylvania cases, and has held that a sum paid by executors, by virtue of an agreement among the residuary legatees, to an heir in consideration of his promise not to contest the will, is no part of the expenses of administration to be deducted from the estate in ascertaining its value for purposes of the inheritance tax. To adopt the language of the court: "No changes of title, transfers, or agreements of those who succeed to the estate, among themselves or with strangers, can affect the tax. All questions concerning it must be determined as of the date of decedent's death. . . . The statute requires all the property of the estate to be appraised at its fair market value. The value of the estate which passes is the value so ascertained less the indebtedness of the decedent and the expenses of administration. Whatever litigation may occur between those who succeed to the estate as to their respective rights, or between different claimants of interests, cannot affect such value. The fair market value so ascertained is the basis upon which the amount of the tax must be fixed. Unjust claims may be made against those succeeding to the estate, and they may be put to great expense in defending their property, but the value of the property or of their respective interests in the property is not thereby affected. . . . It is argued that the heir received the sum paid her as the value of her interest in the estate by virtue of the fact that she was heir, and that it therefore passed by descent. In fact, however, she received nothing as heir. She received nothing from the estate. No beneficial interest passed to her under any statute. The money was paid to her by virtue of a contract with the heirs. The decedent died testate. His will disposed of all of his estate. The whole of the residuary estate vested, at the instant of his death, in the residuary legatees. The inheritance tax was then due and pay-

able. The beneficial interest in the property then passed to the legatees and their succession gave rise to the tax. Subsequent events did not affect it.”<sup>4</sup>

The court in rendering this decision, however, admits, as it had previously held,<sup>5</sup> that lawful expenses incurred by executors in successfully defending a will contest were properly deducted, and then proceeds to state: “It is argued that the amount paid in compromise of the threatened litigation diminished the value of the estate as much as if it had been paid in attorneys’ fees. While the result to the residuary legatees may have been the same, the amount of the beneficial interest which passed to them under the will was not affected by the fact that they used a portion of the amount which did so pass in the defense against or settlement of an assault upon their title. Moneys lawfully paid by the executors in such defense stand on a different footing, because the beneficial interest which passes under a will is only what remains after the payment of the indebtedness of the estate and expenses of administration.”<sup>6</sup>

**§ 160. Compromise of a Will Contest or Litigation—New York Decisions.**—In reaching the foregoing conclusion, the Illinois court relies on a decision of the New York court of appeals in *Estate of Cook*. In that case the widow and adopted daughter of the testator resisted the probate of his will; thereafter it was admitted to probate under an agreement whereby his nephews and nieces, as residuary legatees, transferred their interests in the estate to the widow. This arrangement was made in good faith for no other purpose than to avoid a will contest. The court held that the residue was taxable at the rate of five per cent

<sup>4</sup> *Estate of Graves*, 242 Ill. 212, 89 N. E. 978.

<sup>5</sup> *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350.

<sup>6</sup> *Estate of Graves*, 242 Ill. 212, 89 N. E. 978. See sec. 322, post.



as in the case of a bequest to nephews and nieces, rather than at the rate of one per cent as in the case of a bequest to a widow. Said the court: "The compromise did not change the will. No settlement could change a word that the testator wrote. The will stands as it was written, and the most solemn instrument, executed by all parties interested, could not convert a bequest to the nephews and nieces into a bequest to the widow. As we said in another case, she takes under them 'by contract, not under the will or from the testator': *Greenwood v. Holbrook*.' A succession tax is measured by the legal relation which the legatee bears to the testator, and is not affected by the relation which an assignee of the legatee bears to him. Here the legatees took the residuum under the will. They succeeded the testator in the ownership thereof, and their succession gives rise to the tax. The widow did not take the residue from the testator, for he did not give it to her. She took as assignee, not as legatee. Unless she took as assignee, she did not take at all. The legatees assigned to her, and the rate of taxation is fixed by their relation to the testator. As she did not take through the will, the succession tax cannot be fixed at the rate of one per cent, as in the case of a bequest to a widow, but must be fixed at the rate of five per cent, as in the case of a bequest to nephews and nieces."\*

The theory of the New York decision, as interpreted by the Iowa court, is that the estate vested at the testator's death, and that since the legatees did not refuse the bequests, but transferred them to the widow, they thereby impliedly accepted, and the widow took, the residuary estate not through transfer by the will but through transfer by assignment.\*

\* *Greenwood v. Holbrook*, 111 N. Y. 465, 18 N. E. 711.

\* *Estate of Cook*, 187 N. Y. 253, 79 N. E. 991.

\* *Estate of Wells*, 142 Iowa, 255, 120 N. W. 713.

On another occasion the New York court of appeals decided that a sum expended by successful contestants in litigation over a will cannot be deducted in valuing the estate for the purpose of the transfer tax, although the court charges costs and allowances in their favor upon the estate. "We think," said Chief Justice Andrews, "the surrogate properly disallowed this item. It was not a claim existing against the decedent or his property. The tax imposed by the statute is upon the interests transferred by will or under the intestate law of the state. The devolution of the property and the right of the state have their origin at the same moment of time. The ascertainment of the value of the taxable interest and the fixing of the tax necessarily takes place subsequent to the death. But the guide is the value at the time of the death, when the interests were acquired. The fact that the appellants were put to expense in asserting their rights and were embroiled in expensive litigation to obtain them was their misfortune. It did not diminish the value of the interests which devolved upon them on the testator's death. It was a loss, but a loss to their general estate. It did not prevent them receiving the whole interest transmitted to them. The fact that the court charged certain costs and allowances in their favor upon the estate did not change the situation."<sup>10</sup>

**§ 161. Compromise of Will Contest—Iowa Decisions.**—The Iowa court reviews the foregoing New York and Pennsylvania cases, without pointing out any necessary conflict between them, and decides that where a testator by his will gave a legacy to the sister of his deceased wife and the remainder of the estate to his heirs, but an earlier will gave the whole estate

<sup>10</sup> *Estate of Westburn*, 152 N. Y. 93, 46 N. E. 315. See sec. 322, *post*.

to the wife, who predeceased him leaving as her heirs the aforesaid sister and two children of another sister, and these heirs contested the last will but compromised with the heirs of the testator under an agreement by which the will was admitted to probate and the sister was to receive the amount given her under the will and the two children were to receive certain other amounts, the payment thereof to be in full satisfaction of their claims against the estate—the children took nothing under the will, nor as heirs or creditors, but solely by virtue of the settlement, and hence the amounts received were not subject to inheritance taxation.<sup>11</sup>

**§ 162. Compromise of Will Contest—Massachusetts Decisions.**—In Massachusetts it recently has been decided that in case a will is contested and the beneficiaries thereunder enter into a compromise with the heirs whereby the estate is distributed in a manner differing from that provided in the will, the amount of the inheritance tax should be determined in accordance with the terms of the will; and this although the compromise has been effected as is in such cases provided by statute, and has been confirmed by the probate court and a decree entered thereon. For, to use the language of Justice Hammond, “in view of the nature and office of the compromise statute, and of the language of the tax statute, the most reasonable interpretation of the phrase ‘which shall by will’ in the tax statute is that it describes only property that passes by the terms of the will as written and not as changed by any agreement for compromise made within or without the statute. Any other interpretation would make the amount to be assessed hinge on the manner in which the agreement was to

<sup>11</sup> Estate of Wells, 142 Iowa, 255, 120 N. W. 713.

be carried out." The court cites the Illinois, Iowa and New York decisions as supporting this conclusion, and declines to follow the Pennsylvania decisions.<sup>13</sup>

**§ 163. Compromise of Will Contest—Other Decisions.**—In Nebraska it is affirmed that real estate devised by will passes to the devisee at the death of the testator, and its status under the law taxing inheritances is fixed at that time, so that an agreement between the devisees to satisfy a claim against the estate in favor of one of them by a conveyance of a portion of the property to the claimant will not exempt it from the inheritance tax.<sup>14</sup>

In Tennessee, where the testator left all his property to his widow, collateral heirs contested the will, and procured it to be set aside, but the case was reversed on appeal and remanded, and the widow then proposed to deed one-half of the property to the contestants if they would withdraw the contest, which proposition was accepted, it was held that the collateral representatives did not derive title from the decedent, but from the deeds of the widow, and that no collateral inheritance tax was due.<sup>15</sup>

In Colorado, where the sole heir of the testator contested the will because it made him a less liberal allowance than the statute, and the executor paid him a sum in addition to his legacy in consideration of a withdrawal of the contest, it was decided that the sum thus paid was subject to the tax.<sup>16</sup>

Cases somewhat analogous to the above have arisen when taxes under United States internal revenue laws have been sought to be imposed on money received

<sup>13</sup> *Baxter v. Stevens*, 209 Mass. 459, 95 N. E. 854. But see the last paragraph of the next section.

<sup>14</sup> *Estate of Sanford* (Neb.), 133 N. W. 870.

<sup>15</sup> *English v. Crenshaw*, 120 Tenn. 531, 127 Am. St. Rep. 1025, 110 S. W. 210.

<sup>16</sup> *People v. Rice*, 40 Colo. 508, 91 Pac. 33.

as the result of a compromise in a will contest, and it has been affirmed that money thus received does not fall within the category of "legacies" or "distributive shares" subject to the federal internal revenue tax.<sup>16</sup> Where an instrument offered as a will is not admitted to probate, but contested proceedings therefor are compromised as authorized by the Massachusetts statute, and the estate is distributed pursuant to the compromise decree, this compromise is deemed the will under which the property passed for the purposes of the federal war revenue act of 1898, and the tax due thereunder is determined accordingly."

**§ 164. Renunciation or Waiver of Legacy.**—Since a legacy does not become effective until accepted, there is no transfer thereof to which an inheritance tax will attach if the legatee waives or renounces the legacy, but the succession thereupon becomes taxable, if at all, in accordance with the ultimate devolution of the property. "If no transfer is effected because it turns out that there is no property to transfer, no tax can be collected, and, if the legatee renounce the gift and refuse to receive it, no tax can be collected with respect to him, because there has been no transfer to him. His right to renounce the privilege of accepting the donation is not denied or forbidden by the statute, and such right is recognized by the authorities. . . . On his effective renunciation the title to, or ownership of, the property of the gift remains in the estate to be disposed of under the terms of the will and the succession is taxable in accordance with the nature of the ultimate devolution. . . . Assuming the right of an individual to reject proffered bounty, whether tendered by deed to take effect at the grantor's death, or by will, I can see no good rea-

<sup>16</sup> *Page v. Rives*, 1 Hughes, 297, Fed. Cas. No. 10,666.

<sup>17</sup> *McCoy v. Gill*, 156 Fed. 985.

son for applying the provisions of the tax law to a mere abortive attempt at a transfer as well as to the consummated act."<sup>18</sup>

In a recent Iowa case it is affirmed that the state cannot collect a collateral inheritance tax on a legacy which has been waived by the collateral legatee.<sup>19</sup> This decision is in affirmance of an earlier case holding that a contract between the beneficiaries in a will, including a collateral legatee, whereby the provisions of the will are renounced and a division of the property provided for, is valid, notwithstanding its effect is to deprive the state of a collateral inheritance tax otherwise collectible upon the legacy to the collateral legatee.<sup>20</sup>

**§ 165. Compensation to Executor or Trustee.**—The statutes usually provide that when a testator makes a bequest or devise to his executors or trustees in lieu of commissions or compensation, the excess of this gift over and above a reasonable compensation for their services is subject to the inheritance tax.<sup>20a</sup> Accordingly, where a testator directs that his executor and trustee be paid an annual sum, together with the commissions allowed by law, so long as he should act, in full compensation for his services, and he accepts the annual sum, it is subject to the transfer tax.<sup>21</sup>

<sup>18</sup> *Estate of Cook*, 187 N. Y. 253, 79 N. E. 991; *Estate of Wolfe*, 89 App. Div. 349, 85 N. Y. Supp. 949, affirmed, 179 N. Y. 599, 72 N. E. 1152.

<sup>19</sup> *Morrow v. Durant*, 140 Iowa, 437, 17 Ann. Cas. 850, 23 L. R. A., N. S., 474, 118 N. W. 781.

<sup>20</sup> *Estate of Stone*, 132 Iowa, 136, 10 Ann. Cas. 1033, 109 N. W. 455.

<sup>20a</sup> *Estate of Gould*, 19 App. Div. 352, 46 N. Y. Supp. 506, 48 N. Y. Supp. 872, 156 N. Y. 423, 51 N. E. 287; *Estate of Vanderbilt*, 68 App. Div. 27, 74 N. Y. Supp. 450, 71 App. Div. 611, 75 N. Y. Supp. 969, 172 N. Y. 69, 84 N. E. 782.

<sup>21</sup> *Estate of Huber*, 86 App. Div. 458, 83 N. Y. Supp. 769.

But a bequest to an executor of a stated sum "over and above his legal commissions and expenses," has been held to be not within the statutory provision that when a bequest is made in lieu of commissions the excess thereof above reasonable compensation is subject to the inheritance taxation.<sup>23</sup> Neither does such provision apply where the testator gives legacies to his executors, but not in lieu of commissions, and directs that no compensation shall be made them for their services.<sup>24</sup>

In Maryland, where executors were appointed under the will of a testator who died March 27, 1845, their commissions were held subject to the tax imposed by the act of 1844, which did not go into effect until June 2, 1845.<sup>24</sup>

<sup>23</sup> *Matter of Underhill*, 2 Con. Sur. 262, 20 N. Y. Supp. 134.

<sup>23</sup> *Estate of Vanderbilt*, 68 App. Div. 27, 74 N. Y. Supp. 450.

<sup>24</sup> *Williams v. Mosher*, 6 Gill (Md.), 454.

## CHAPTER XI.

## SITUS OF PROPERTY—NONRESIDENCE OF PARTIES.

- § 170. In General.
- § 171. Real Estate.
- § 172. Personal Property—Nonresidents.
- § 173. Personal Property in Foreign States.
- § 174. Marshaling Assets—Massachusetts Rule.
- § 175. Marshaling Assets—New York Rule.
- § 176. Marshaling Assets—New Jersey Rule.
- § 177. Money and Deposits in Banks or Trust Companies.
- § 178. Debts Due Nonresident.
- § 179. Notes, Papers and Securities.
- § 180. Notes Secured by Mortgage on Real Estate.
- § 181. Corporate Bonds.
- § 182. Stock in Domestic Corporations.
- § 183. Stock in Corporation Organized in Two States.
- § 184. Stock in Foreign Corporations.

§ 170. In General.—In the administration of inheritance tax statutes no more difficult question is likely to arise than the determination of the situs of property. Of course when property is actually located in the state of the owner's domicile at the time of his death, the dominion over it, the transmission of it, and hence the taxation of its transfer, are governed exclusively by the law of that state; but when the property is in fact located in one state and the owner dies domiciled in another, problems are presented that do not lend themselves to easy solution. The tendency in many states has been to tax all personal property within its territorial boundaries, notwithstanding it may be owned by nonresidents; and also to tax all personal property of its residents, notwithstanding its actual location may be without the state. With respect to the same personalty, one state imposes a succession tax in accordance with the theory that the situs of personal estate is the domicile of the owner, while another state imposes it because the actual situs



is within that estate; and the same state may assume either position according as it becomes necessary in order to reach any particular property. Clearly, this is not entirely consistent, and possibly it is not free from injustice, but it is not opposed to constitutional principles, as will be seen in subsequent paragraphs, though it does seem to evidence a disposition on the part of the state to exert its taxing power to the fullest extent.<sup>1</sup>

When neither the property nor the domicile of the owner is within the state at the time of his death, inheritance tax laws of that state can have no operation, at least unless the legislative intent to that effect is clearly expressed, although his heirs or legatees reside therein.<sup>2</sup>

§ 171. **Real Estate** situated within a state is, under most if not all statutes, subject to the inheritance tax of that state, whether or not the owner is a resident at the time of his death and whether he dies testate or intestate. But real estate situate without a state, though owned by a resident thereof, is generally not subject to its inheritance tax law, whether he dies testate or intestate. If he dies intestate, the succession is by the law of the state where the land is situated, and hence there is neither transmission nor property within the jurisdiction of the other state; if he makes a will, while the devolution is governed by the testamentary instrument, and hence in a measure by the laws of his state, still the inheritance tax statutes have been con-

<sup>1</sup> See *Estate of Stanton*, 142 Mich. 491, 105 N. W. 1122; *State v. District Court*, 41 Mont. 357, 109 Pac. 438; *Blackstone v. Miller*, 188 U. S. 189, 47 L. Ed. 439, 23 Sup. Ct. Rep. 277. See sec. 172 et seq., post.

<sup>2</sup> *State v. Brim*, 57 N. C. 300; *Estate of Hood*, 21 Pa. 106.

strued not to apply and thus discriminate against transmissions by will.\*

Some variations from the general rule of the taxation of successions to real property may be introduced

\* *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350; *Succession of Westfeldt*, 122 La. 836, 48 South. 281; *Matter of Swift*, 137 N. Y. 77, 18 L. B. A. 709, 32 N. E. 1096; *Matter of Enston*, 46 Hun (N. Y.), 506; *Lorillard v. People*, 6 Dem. Sur. (N. Y.) 268; *State v. Brevard*, 62 N. C. 141; *Appeal of Commonwealth*, 129 Pa. 338, 18 Atl. 132. The Illinois statute, which is essentially the same as the New York and perhaps other statutes under which the above decisions were rendered, provides that "All property, real, personal and mixed, which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while a resident of this state or, if decedent was not a resident of this state at the time of his death, which property or any part thereof shall be within this state": *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350.

In the above Pennsylvania case it was decided that the fact that the devisor of land situate in Maryland was domiciled at the time of his death in Pennsylvania, and that the devisee was a Pennsylvania corporation, made no difference in the applicability of the rule denying to state tax laws an extraterritorial operation. The following is an extract from the opinion of the court: "The collateral inheritance tax imposed by the act of 1887 upon real estate is a tax upon the property itself. This clearly appears from the second proviso in the third section of the act, which is, 'and provided further, that the tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid.' It has not been made to appear how the state of Pennsylvania can impose a tax upon real estate situate in Maryland; and not only impose a tax upon it, but also charge it with a lien for such unpaid tax. While it is conceded that the powers of the state for taxing purposes are very great, they are necessarily limited to either property or persons within her borders. All property of the citizen within the state may be taxed, and all such property outside the state as is drawn to or follows in law the person or domicile of the owner, such as bonds and mortgages, moneys at interest, etc., no matter where situate. But real estate is not drawn to the person or domicile of the owner, for taxation or any other purpose, and hence cannot be taxed outside of the jurisdiction where it is situate. The taxation of property involves the reciprocal duty of protection on the part of the state levying such tax. This real estate, as before said, is situate in the state of Maryland, and is subject to taxation

in the case of an equitable conversion or the exercise of a power of appointment or the creation of a trust in a conveyance in contemplation of or intended to take effect after death, as has heretofore been considered.<sup>4</sup>

**§ 172. Personal Property of Nonresidents.**—The statutes usually impose an inheritance tax on all legacies of tangible personal property within the state, although the testator or owner dies a resident of another state. Thus is the fiction that the situs of personal property is the domicile of the owner made to yield to the fact.<sup>5</sup> There is no doubt of the consti-

by the laws of that state. If it had been devised to a citizen of Maryland, it could not have been seriously contended that the act of 1887 could have been enforced against him. Does it make any difference that the devisee is a Pennsylvania corporation? We think not. It may be that the state might impose a succession tax upon every citizen of the state who succeeds to either real or personal estate, from whatever source received. This is not such tax, however. It is a direct tax upon the thing devised in the hands of the devisee, a tax which the state is powerless to enforce. The executor cannot, as in the case of a legacy, deduct it from the legacy. He has nothing to do with it, and the state itself cannot exercise extraterritorial taxing power as to real estate, and carry into another state, and enforce there, its remedies for the collection of taxes."

Leases of land in Japan at a fixed rent so long as the rent should be paid are in the nature of real estate, and not subject to the transfer tax of New York when the tenant dies domiciled in that state: *Estate of Vivanti*, 63 Misc. Rep. 618, 118 N. Y. Supp. 680.

<sup>4</sup> Secs. 54, 83, 116, ante.

<sup>5</sup> *Matter of James*, 144 N. Y. 6, 38 N. E. 961, affirming 77 Hun, 211, 28 N. Y. Supp. 351, and reversing 6 Misc. Rep. 206, 27 N. Y. Supp. 288; *Estate of Ramsdill*, 190 N. Y. 492, 18 L. E. A., N. S., 946, 83 N. E. 584; *Matter of Enston*, 5 Dem. Sur. (N. Y.) 93, 19 Abb. N. C. 227; *Estate of Vinot*, 7 N. Y. Supp. 517; *Matter of Chabot*, 44 App. Div. 340, 60 N. Y. Supp. 927, affirmed, 167 N. Y. 280, 60 N. E. 598; *Alvany v. Powell*, 55 N. C. 51; *Estate of Speers*, 4 Ohio N. P. 238; *Commonwealth v. Smith*, 5 Pa. 142.

In the recent case of *People v. Griffith*, 245 Ill. 532, 92 N. E. 313, in passing upon the question whether the transfer of personal property of a nonresident actually present in Illinois was taxable under its laws, the court said: "Counsel for appellees argue that in con-

tutionality of this manner of taxation, for clearly the state may impose a tax on property and its transmission which enjoys the protection of its laws, and this

struing the inheritance tax statute, if there is doubt as to the meaning of any of its provisions, the rule that the situs of the personal property follows the domicile of its owner should be followed. The English rule is that in these matters the maxim '*Mobilia sequuntur personam*' applies, and such tax on personal property is levied only at the domicile of the decedent: *Thompson v. Advocate General*, 12 Clark & F. 1; *Dos Passos on Inheritance Tax Law*, 2d ed., 149. In many of our states the actual or real situs of the property having a visible and tangible existence, rather than the domicile of the owner, has been the place for the fixing of such taxes: *Dos Passos on Inheritance Tax Law*, 2d ed., 167. The tendency of modern legislation in this country is to extend the state's taxing power to all property within its jurisdiction (27 Am. & Eng. Ency. of Law, 2d ed., 650), and this is especially true as to inheritance taxes on the right of succession to all property, whether real or personal, tangible or intangible, which passes, testate or intestate, from decedents to other persons.

"The ancient maxim 'that movables follow the domicile of the person' was an outgrowth of conditions which have long since ceased to exist, and the rule has been greatly limited in certain matters, such as taxation and the subjecting of personal property of non-residents to the claims of local creditors. It is usually, however, the law that personal property is sold, transmitted, or obtained under the will or intestate laws according to the law of the domicile, and not that of the situs of the property: *Davis v. Upson*, 230 Ill. 327, 82 N. E. 824; *Eidman v. Martinez*, 184 U. S. 578, 46 L. Ed. 697, 22 Sup. Ct. Rep. 515. The law as to probating foreign wills has been modified by the legislature of this state as to personal property since the decision in *Davis v. Upson*, supra: *Laws 1909*, sec. 10, p. 472. An inheritance tax is not upon the property itself, but upon the right to succeed to the property: *United States v. Perkins*, 163 U. S. 625, 41 L. Ed. 287, 16 Sup. Ct. Rep. 1073; *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 42 L. Ed. 1037, 18 Sup. Ct. Rep. 594. The laws that govern the descent and devise of property are statutory, and are subject to legislative change, at discretion: *Kochersperger v. Drake*, 167 Ill. 122, 41 L. R. A. 446, 47 N. E. 321. The succession to the ownership of property being by permission of the state, the state can impose conditions in granting such privilege or permission. The courts, therefore, have upheld the imposition of an inheritance tax whenever the state had jurisdiction of the beneficiary or the subject matter, regardless of the actual location of the personal property or the domicile of the decedent. It has been held that a tax could be collected on a deposit

although the state of the owner's domicile may also tax the succession. The property is in fact within

left by a nonresident testator with a trust company in New York, and also on a debt due him in the same state (*Blackstone v. Miller*, 188 U. S. 189, 47 L. Ed. 439, 23 Sup. Ct. Rep. 277); the theory being that the transfer of the deposit was subject to the laws of New York, and that the collection of the debt could only be enforced because of the control of the state courts over the debtor. Stocks and bonds of domestic corporations and bonds of foreign corporations owned by a nonresident decedent but deposited in the state have been held subject to such tax: *In re Whiting*, 150 N. Y. 27, 55 Am. St. Rep. 640, 34 L. B. A. 232, 44 N. E. 715; *In re Morgan*, 150 N. Y. 35, 44 N. E. 1126. Tangible personal property outside of the state, of a resident decedent, has been held subject to this tax (*In re Swift*, 137 N. Y. 77, 18 L. B. A. 709, 32 N. E. 1096), as has been, also, the stock of a foreign corporation (*In re Merriam*, 141 N. Y. 479, 36 N. E. 505). The liability of property to an inheritance tax does not depend upon the location, but upon whether the beneficiary came into its possession through the exercise of a privilege conferred by the state: *Matter of Hull's Estate*, 111 App. Div. 322, 97 N. Y. Supp. 701. The question in this case, as in all other cases, is not the constitutional power of the legislature to levy an inheritance tax upon personal property of a nonresident decedent, whether such property be tangible or intangible, since that has been firmly established, but is as to the intent to do so under the particular act in question. . . . Laws imposing general taxes upon real and personal property are not controlling when applied to taxes upon the succession, when such succession takes place and is governed by the laws of a foreign country. The actual situs of the property in such cases cuts but a small figure, while in the case of general taxes upon such property it is now considered determinative of the whole question: *Eidman v. Martinez*, 184 U. S. 589, 46 L. Ed. 697, 22 Sup. Ct. Rep. 515."

Where a man dies intestate and domiciled in another state and leaves personal property in the state of his domicile, and two weeks afterward his sister, who is domiciled in Pennsylvania and is entitled to a share of his estate, also dies before actually receiving any of the estate, such share is liable to the collateral inheritance tax of Pennsylvania: *Estate of Milliken*, 206 Pa. 149, 55 Atl. 853.

Where a resident of France, entitled to a share of a residuary estate under a will admitted to probate in New York, died before his share was paid to him, and it is paid to his executor and trustee under his will, also admitted to probate in New York, his share of such residuary estate is subject to the inheritance tax. It is not exempt on the ground that at the time of his death his interest was a mere chose in action

the jurisdiction of the state and subject to its dominion, regardless of the domicile of the owner.<sup>6</sup>

whose situs was at his domicile in France: *Estate of Clinch*, 180 N. Y. 300, 73 N. E. 36.

In *Estate of Lord*, 111 App. Div. 152, 97 N. Y. Supp. 553, affirmed, 186 N. Y. 549, 79 N. E. 1110, a nonresident made his wife his residuary legatee, and the will was probated in another state. Before distribution the wife died testate, and the executor of the husband's will removed from the state of New York property that passed to her executor under the residuary bequest. Her will was also probated in another state, and disposed of this property. It was held that the property thus removed was not subject to the New York transfer tax on distribution under the wife's will. In rendering its decision the court quotes the language of Justice Vann in *Matter of Houdayer*, 150 N. Y. 37, 55 Am. St. Rep. 642, 34 L. R. A. 235, 44 N. E. 718, as follows: "A reasonable test in all cases, as it seems to me, is this: Where the right, whatever it may be, has a money value and can be owned and transferred, but cannot be enforced or converted into money against the will of the person owning the right without coming into this state, it is properly within this state for the purposes of a succession tax."

Where a resident of Massachusetts died leaving his property to his widow, and at the time of his death he was residuary legatee of an estate in process of settlement in New York, it was held that he had no property in New York at the time of his death, but merely a future right of action, and that a transfer tax thereon need not be paid by his ancillary administrator in New York: *In re Phipps*, 77 Hun, 325, 28 N. Y. Supp. 330, affirmed, 143 N. Y. 641, 37 N. E. 823.

In Iowa under a statute imposing an inheritance tax on the transmission of all property within the jurisdiction of the state it has been decided that when a resident of that state dies owning cattle in another state which pass under his will, they are not subject to the inheritance tax of Iowa, nor are their proceeds when brought into the state for distribution: *Weaver's Estate v. State*, 110 Iowa, 328, 81 N. W. 603.

In New Hampshire it is affirmed that an estate embraces all property originally within the state, or that the executor has been able to find elsewhere and bring therein, and whatever sums he may have to pay to bring the property within the state merely reduces the amount within the control of the court: *Kingsbury v. Bazeley*, 75 N. H. 13, 139 Am. St. Rep. 664, 20 Ann. Cas. 1355, 70 Atl. 916.

Personal property in the United States, which passes under the will of an alien, made in New York during his temporary sojourn there, is not subject to the inheritance tax imposed by the war revenue act of 1898: *Buckgaber v. Moore*, 104 Fed. 947, 31 Civ. Proc. Rep. 310, affirmed, 114 Fed. 1020, 52 C. C. A. 587; affirmed, *Moore v. Buckgaber*, 184 U. S. 593, 46 L. Ed. 705, 22 Sup. Ct. Rep. 521.

<sup>6</sup> *Callahan v. Woodbridge*, 171 Mass. 595, 51 N. E. 176; *Estate of Rogers*, 149 Mich. 305, 119 Am. St. Rep. 677, 11 L. R. A., N. S., 1134,

"No one doubts," to quote from Justice Holmes, "that succession to a tangible chattel may be taxed wherever the property is found, and none the less that the law of the situs accepts its rules of succession from the law of the domicile, or that by the law of the domicile the chattel is part of a universitas and is taken into account again in the succession tax there. No doubt this power on the part of two states to tax on different and more or less inconsistent principles leads to some hardship. It may be regretted, also, that one and the same state should be seen taxing on the one hand according to the fact of power, and on the other, at the same time, according to the fiction that, in succession after death, *mobilia sequuntur personam* and domicile governs the whole. But these inconsistencies infringe no rule of constitutional law. . . . Power over the person of the debtor confers jurisdiction, we repeat. And this being so, we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the state at the time of the death. The maxim, '*Mobilia sequuntur personam*,' has no more truth in the one case than in the other. When logic and the policy of a state conflict with a fiction due to historical tradition, the fiction must give way."'

The power of the state in the matter of imposing an inheritance tax on personal property within its borders belonging to a nonresident is over the property rather than over the succession; the right to impose the tax in such case is based on the dominion of the state over the property situated within its territory."

112 N. W. 931; *Blackstone v. Miller*, 188 U. S. 189, 47 L. Ed. 439, 23 Sup. Ct. Rep. 277.

<sup>7</sup> *Blackstone v. Miller*, 188 U. S. 206, 47 L. Ed. 439, 23 Sup. Ct. Rep. 277, approved in *Neilson v. Russel*, 76 N. J. L. 27, 69 Atl. 476.

<sup>8</sup> *Kingsbury v. Bazeley*, 75 N. H. 13, 139 Am. St. Rep. 664, 20 Ann. Cas. 1355, 70 Atl. 916; *Matter of Bronson*, 150 N. Y. 1, 55 Am. St. Rep.

In Tennessee, under a statute providing that all estates, real, personal and mixed, situated within the state, whether the person dying seised thereof be domiciled within or without the state, passing to any person other than to the father, mother, husband, wife, children, and lineal descendants of the deceased, shall be subject to a tax, it has been held that when, under the laws of a decedent's domicile, the property passed to his mother, it could not be taxed in Tennessee, although under its law the property would have passed to a brother.<sup>9</sup>

Under a statute imposing a tax on property "passing from any person who may die seised and possessed thereof, being in this state," to any person not of certain enumerated relatives of deceased persons, the words "being in the state" refers to the property, not to the person.<sup>10</sup>

**§ 173. Personal Property in Foreign States.**—In a majority of the states the personal property of a resident decedent is held subject to the inheritance tax of the state, although actually situated in another state where it may also be taxed by the statutes of that state. Otherwise stated, personal property within the jurisdiction of a foreign state is subject to the inheritance tax at the place of the decedent's domicile. This is on the theory that the tax is imposed upon the transmission of the property, and that the transmission of personal property is governed by the law of the domicile of the owner.<sup>11</sup>

632, 34 L. R. A. 238, 44 N. E. 707; *Estate of Embury*, 19 App. Div. 214, 45 N. Y. Supp. 881, affirmed, 154 N. Y. 746, 49 N. E. 1096; *Estate of Fitch*, 39 App. Div. 609, 57 N. Y. Supp. 786.

<sup>9</sup> *Fidelity & Deposit Co. v. Crenshaw*, 120 Tenn. 606, 110 S. W. 1017.

<sup>10</sup> *State v. Dalrymple*, 70 Md. 294, 3 L. R. A. 372, 17 Atl. 82; *Commonwealth v. Smith*, 5 Pa. 142; *Estate of Short*, 16 Pa. 63.

<sup>11</sup> *Appeal of Gallup*, 76 Conn. 617, 57 Atl. 699; *Frothingham v. Shaw*, 175 Mass. 59, 78 Am. St. Rep. 475, 55 N. E. 623; *McCurdy v.*



In speaking of the Connecticut statute, the supreme court of that state uses this language: "The act is framed in view of the principle that personal property is bequeathed by will and is descendible by inheritance according to the law of the domicile, and that the disposition, distribution of, and succession to personal property, wherever situated, is to be governed by the laws of that state where the owner had his domicile at the time of his death. It is the intent and meaning of the act, as expressed through all its provisions and all the language used in view of these provisions, to provide for a succession tax of this kind, namely, a death duty upon the occasion of the succession to all the personal property of a decedent, wherever situated, which takes place in consequence of his death within the jurisdiction of this state when such decedent was a domiciled resident thereof, measured as to amount in the manner described, and payable by the administrator from any property remaining after the estate has been cleared, necessary to be used for the payment of the whole duty."<sup>12</sup>

And the New Jersey court, in holding that the situs of personal property of a testator, for the purpose of the inheritance tax, is his domicile at the time of his death,<sup>13</sup> observes that the result, in the case before it, "will be the requirement of the payment of two taxes of like character by the same legatees for the right of succession to the gifts of the testatrix; but this unfortunate situation cannot control the determination of the questions presented, for such a condition frequently arises, and, while its presence always

McCurdy, 197 Mass. 248, 14 Ann. Cas. 859, 16 L. R. A., N. S., 329. 83 N. E. 881; Matter of Swift, 137 N. Y. 77, 18 L. R. A. 709, 32 N. E. 1096, reversing 64 Hun, 639, 19 N. Y. Supp. 292; Estate of Dingman, 66 App. Div. 228, 72 N. Y. Supp. 694; Estate of Lines, 155 Pa. 378, 26 Atl. 728.

<sup>12</sup> Appeal of Hopkins, 77 Conn. 644, 60 Atl. 657.

<sup>13</sup> Estate of Hartman, 70 N. J. Eq. 664, 62 Atl. 560.

induces most careful consideration on the part of the court to find some legal method to prevent it, it must be submitted to unless it can be avoided under settled rules relating to the subject. The law of New York on this subject is for all practicable purposes identical with the law of this state, and in construing it Judge Gray<sup>14</sup> presents very strong and cogent reasons in support of his opinion that the tax provided for is only enforceable as to property which, at the time of its owner's death, was within the territorial limits of the domiciliary state; but the majority of the court were not convinced by his reasoning, and held that personal property of a resident decedent, wheresoever situated, whether within or without the state, was subject to the tax imposed by the act. The great weight of authority favors the principle adopted by the New York court of appeals, holding that the tax imposed is on the right of succession under a will, or by devolution in case of intestacy, and that as to personal property its situs, for the purpose of a legacy or succession tax, is the domicile of the decedent, and the right of its imposition is not affected by the statute of a foreign state which subjects to similar taxation such portion of the personal estate of any nonresident, testator, or intestate as he may take and leave there for safe-keeping, or until it should suit his convenience to carry it away."

**§ 174. Marshaling Assets—Massachusetts Rule.**—The marshaling of assets in the case of a nonresident decedent leaving personal property in the state presents a delicate question.<sup>14a</sup> In Massachusetts the rule appears to be that the executor should so marshal the assets of the estate as not to deprive the state

<sup>14</sup> *Estate of Swift*, 137 N. Y. 77, 18 L. R. A. 709, 32 N. E. 1096.

<sup>14a</sup> *Wieting v. Morrow*, 151 Iowa, 590, 132 N. W. 193; *Estate of Clark*, 37 Wash. 671, 80 Pac. 267.

of its tax. The supreme court of that state, after laying down the rule that personal property within the jurisdiction of a foreign state is subject to a succession tax in the place of the decedent's domicile, declares: "This doctrine furnishes a strong implication that personal property in the decedent's domicile should not be used to relieve property subject to a succession tax under the ancillary administration of another state by discharging liens upon it for the purpose of increasing this succession tax. The tax is to be estimated in reference to the property that is within the jurisdiction of the commonwealth at the time of the testator's death."<sup>15</sup>

On a subsequent occasion the Massachusetts court, following the rule previously enunciated that property passes and becomes vested at the death of the decedent, holds that the executor of a decedent, who died in New Hampshire, leaving property in Massachusetts as well as in New Hampshire, cannot use stock held by the decedent in Massachusetts corporations to pay debts and legacies exempted from the succession tax, and so relieve the property in Massachusetts from the imposition of such tax.<sup>16</sup>

**§ 175. Marshaling Assets—New York Rule.**—The New York courts seem to incline to the rule that the executor should marshal the assets in favor of the legatee, and not so as to increase the legacy tax. A case arose in that state involving these facts: A decedent domiciled in Great Britain left property there as well as in New York. He gave legacies to collateral relatives, and left the residue of his estate to his two brothers. The executor paid the collateral legacies out of the property situated in Great Britain,

<sup>15</sup> *McCurdy v. McCurdy*, 197 Mass. 248, 83 N. E. 881.

<sup>16</sup> *Kingsbury v. Chapin*, 196 Mass. 533, 13 Ann. Cas. 738, 82 N. E. 700.

leaving the property situated in New York to go into the residuary estate, and thus to the brothers of the decedent. The New York court held that the devotion of the New York property to the payment of the decedent's brothers, who were in the exempt class under the New York statute, rendered that property immune from the imposition of the collateral inheritance tax of that state. The court said: "If the executor determines to pay the legacies from the British estate, the American estate is thereby freed from the burden of a special tax, the imposition of which depends upon the fact of the succession by the legatee to some property which is within the state. If the American estate is appropriated to persons who are within the excepted degrees of relationship to the testator, the right to claim the tax from the executor is gone."<sup>17</sup>

In a subsequent case<sup>18</sup> the court of appeals of New York decides that an administrator of a nonresident decedent, leaving him surviving a brother and nieces and nephews, cannot, by electing to appropriate all the assets within the state to the payment of the distributive share of the brother, avoid payment on the share of the nieces and nephews of the transfer tax, which in case of a nonresident intestate is based on that portion of his estate found within the state, since under the intestate laws a distributee takes an undivided interest in the entire estate. In the course of its opinion the court says: "The Massachusetts court went so far as to hold that in no case can an executor so marshal the assets of an estate as to deprive the state of its tax; but the facts which clearly differen-

<sup>17</sup> Estate of James, 144 N. Y. 6, 38 N. E. 961. See, too, Estate of McEwan, 51 Misc. Rep. 455, 101 N. Y. Supp. 733.

<sup>18</sup> Estate of Ramsdill, 190 N. Y. 492, 18 L. R. A., N. S., 946, 83 N. E. 584.

tiate the case at bar from *Matter of James*<sup>19</sup> incline us to a confirmation of the views expressed in the latter case, which we emphasize by repeating them. When a specific foreign legatee of a foreign testator can obtain satisfaction of his legacy in a foreign jurisdiction, the executor cannot be compelled to pay such a legacy out of the assets within our jurisdiction. This is the necessary result of the practical and obvious distinction between testacy and intestacy as applied to the subject of taxation. If a specific legatee needs not the intervention of our laws or courts to obtain what comes to him under a foreign will, through foreign assets, in a foreign jurisdiction, our laws cannot coerce an executor into paying his legacy out of funds within our jurisdiction for the sole purpose of exacting a tax. But in a case of intestacy the rule is essentially different, because the distributee takes an undivided interest in the whole estate; and, if part of it happens to be within our jurisdiction, he can only get his share of what is here under our laws and through our courts. This is the theory upon which the nephews and nieces of the intestate in the case at bar are clearly taxable under our statute."

According to a decision of the supreme court of New York, the property of a nonresident located in that state is not subject to the transfer tax, if his indebtedness to resident creditors exceeds the value of the property within the state, and the fact that the executor brings money of the decedent from without the state and pays debts, so that securities in the state can be transmitted to be administered at the domicile of the decedent, is immaterial.<sup>20</sup>

<sup>19</sup> *Estate of James*, 144 N. Y. 6, 38 N. E. 961.

<sup>20</sup> *Estate of Grosvenor*, 124 App. Div. 331, 108 N. Y. Supp. 926; *Estate of King*, 71 App. Div. 581, 76 N. Y. Supp. 220, affirmed, 172 N. Y. 616, 64 N. E. 1122.

§ 176. **Marshaling Assets—New Jersey Rule.**—The New Jersey court, after reviewing the Massachusetts and New York decisions, comes to the conclusion that, apart from strictly specific legacies, there is no substantial ground for differentiating the administration of an estate by an administrator from the administration of an estate by an executor, in respect to the question here under consideration. The court affirms that where a nonresident dies intestate, and a portion of his estate has its situs in New Jersey, and there are distributees belonging to both classes—taxable and exempt—that portion of his estate within the state is taxable; and the court further affirms that where a testator dies domiciled in the state of New York, leaving property in that state and also in New Jersey, and leaving bequests to persons which are exempt and bequests to persons which are taxable, under the New Jersey inheritance tax statute, the executor cannot relieve the property in New Jersey from taxation by applying it to the payment of exempt legacies, and by paying the taxable legacies out of the New York property.<sup>21</sup>

§ 177. **Money and Deposits in Banks or Trust Companies,** physically and more than transiently present in a state, belonging to a nonresident, may there be subject to the inheritance tax, notwithstanding the fund may be also liable to a tax under the law of the state of the owner's residence; for the fund is actually within the state and under the protection and dominion of its laws. Here again is the fiction that the situs of personal property is at the residence of the owner made to yield to the truth.<sup>22</sup> This rule has been ap-

<sup>21</sup> *Tilford v. Dickinson*, 79 N. J. L. 302, 75 Atl. 574.

<sup>22</sup> *Callahan v. Woodbridge*, 171 Mass. 595, 51 N. E. 176; *Estate of Houdayer*, 150 N. Y. 37, 55 Am. St. Rep. 642, 34 L. R. A. 235, 44 N. E. 718, reversing 3 App. Div. 474, 38 N. Y. Supp. 323; *Estate of Black-*

plied to deposits in savings banks;<sup>23</sup> money, representing the proceeds of the sale of stock in a foreign corporation, deposited with a trust company;<sup>24</sup> and to money deposited with a broker to margin stock trans-

stone, 69 App. Div. 127, 74 N. Y. Supp. 508, 171 N. Y. 682, 64 N. E. 1118, affirmed, *Blackstone v. Miller*, 188 U. S. 189, 47 L. Ed. 439, 23 Sup. Ct. Rep. 277; *Estate of Burden*, 47 Misc. Rep. 329, 95 N. Y. Supp. 972.

In the *Blackstone* case, which has become a leading decision on the question, it was held that a tax might be levied upon a deposit of money with a trust company, although the depositor was, both at the time of making the deposit and at the time of his death, a resident of another state. This holding is approved in *Estate of Fearing*, 138 App. Div. 881, 123 N. Y. Supp. 396, affirmed, 200 N. Y. 340, 93 N. E. 956, where it is decided that a deposit in New York of a trust fund, the deposit being subject to power of appointment by a nonresident, and being in the individual name of one of the trustees, who does not claim it as against the estate, is subject to the transfer tax. The appointment acted directly upon the fund in deposit, and did not transfer a mere right of action against the trustee.

The *Blackstone* case was again affirmed in *Estate of Myers*, 129 N. Y. Supp. 194, holding that money of a nonresident on deposit in New York for nearly two months before the death of the depositor was taxable, and that the contention of the executrix that the money was there temporarily and for investment, and therefore not subject to the transfer tax, was untenable.

The doctrine of the foregoing cases has been doubted or given a restricted application by some authorities: *Estate of Bentley*, 31 Misc. Rep. 656, 66 N. Y. Supp. 95; *Allen v. Philadelphia Sav. Fund Soc.*, Fed. Cas. No. 234. In *Estate of Leopold*, 35 Misc. Rep. 369, 71 N. Y. Supp. 1032, it is decided that when a nonresident places money on deposit in New York for the purpose of investment in stock of a foreign corporation, it is not subject to the transfer tax on his death before investment.

In *Matter of Thomas*, 3 Misc. Rep. 388, 24 N. Y. Supp. 713, it is held that money which represents the distributive share of the testatrix in an estate in another state, and did not come into the state of New York prior to the death of the testatrix, but was remitted directly from the other state to the executor in New York for distribution under the will of the testatrix, is not taxable under the New York law.

<sup>23</sup> *Estate of Blackstone*, 69 App. Div. 127, 74 N. Y. Supp. 508, affirmed, 171 N. Y. 682, 64 N. E. 1118, affirmed, 188 U. S. 189, 47 L. Ed. 439, 23 Sup. Ct. Rep. 277.

<sup>24</sup> *Matter of Romaine*, 127 N. Y. 80, 12 L. R. A. 401, 27 N. E. 759; *Estate of Burr*, 16 Misc. Rep. 89, 38 N. Y. Supp. 811.

actions, which could be withdrawn at any time, and is withdrawn after the death of the depositor.<sup>25</sup>

On the other hand, deposits made by a resident of one state in a savings bank in another state have been held to be property within the jurisdiction of the state of the depositor's residence, and hence subject to a similar tax in the foreign state.<sup>26</sup> Said the New Hampshire court: "The legislature did not intend to impair the effectiveness of the inheritance tax law by making its operation dependent upon the action or non-action of other states with reference to personal property of resident decedents, which might have a physical situs therein; and there is no constitutional provision limiting the power of the legislature to make a collateral inheritance tax applicable to all property passing under our laws. It is inexact and misleading to say that this result sanctions double taxation, which the policy of this state does not tolerate. Whether the burden imposed by the inheritance law is properly called a tax it is unnecessary to inquire; for, if it is, the legislature has not attempted to impose more than a single tax on the property of a decedent passing collaterally under our laws. If some other state makes a claim to the property under its tax laws and for the support of its institutions, the exercise of such power, whether rightful or wrongful, does not make the exercise of similar power by this state, for the support of its institutions, illegal on the ground of double taxation. The two burdens are created by different and independent states, for wholly different local purposes, and are as distinct and as irrelevant the one to the other, on the question of double taxation, as were

<sup>25</sup> *Estate of Daly*, 100 App. Div. 373, 91 N. Y. Supp. 858, affirmed, 182 N. Y. 524, 74 N. E. 1116.

<sup>26</sup> *Frothingham v. Shaw*, 175 Mass. 59, 78 Am. St. Rep. 475, 55 N. E. 623; *Mann v. Carter*, 74 N. H. 345, 15 L. R. A., N. S., 150, 68 Atl. 130; *Estate of Short*, 16 Pa. 63.



the two taxes assessed upon the plaintiffs' ice in *Winkley v. Newton*.<sup>27</sup> This result is also in accord with the general trend of the authorities upon the subject. As said in *Estate of Hartman*:<sup>28</sup> 'The great weight of authority favors the principle adopted by the New York court of appeals, holding that the tax imposed is on the right of succession under a will, or by devolution in case of intestacy, and that, as to personal property, its situs, for the purpose of a succession tax, is the domicile of the decedent, and the right to its imposition is not affected by the statute of a foreign state, which subjects to similar taxation such portion of the personal estate of any nonresident testator or intestate as he may take and leave there for safekeeping, or until it should suit his convenience to carry it away.' ''<sup>29</sup>

**§ 178. Debts Due Nonresident.**—An indebtedness owing to a nonresident creditor is held not taxable under the statutes of some of the states.<sup>30</sup> This view seems to be based on the theory that the situs of the debt is at the place of residence of the creditor, and hence the debt is not property within the taxing state. In New York, however, it has been affirmed that a debt due a nonresident is subject as property to the transfer tax of that state, and the statute imposing this tax has been upheld as constitutional by the supreme court of the United States. This court disregards the legal fiction that the situs of a debt is at the place of residence of the creditor, and recognizes the fact that the

<sup>27</sup> *Winkley v. Newton*, 67 N. H. 80, 35 L. R. A. 756, 36 Atl. 610.

<sup>28</sup> *Estate of Hartman*, 70 N. J. Eq. 664, 62 Atl. 560.

<sup>29</sup> *Mann v. Carter*, 74 N. H. 345, 68 Atl. 130, 15 L. R. A., N. S., 150.

<sup>30</sup> *Gilbertson v. Oliver*, 129 Iowa, 568, 4 L. R. A., N. S., 953, 105 N. W. 1002; *Estate of Joyslin*, 76 Vt. 88, 56 Atl. 281; *Kintzing v. Hutchinson*, Fed. Cas. No. 7834.

situs is at the place of residence of the debtor because it is there, if at all, that the debt is enforceable."<sup>21</sup>

Recently it has been decided in Nebraska that the right to take by will a credit payable in the state of New York, but evidenced by a contract for the sale of real estate within Nebraska, executed by the vendor, and at all times during his lifetime retained in his possession at his residence in New York, is not subject to the inheritance tax in Nebraska."<sup>22</sup>

**§ 179. Notes, Papers and Securities.**—Mortgages, notes, land contracts and papers, representing property within the state, are there subject to inheritance taxation, notwithstanding they are owned by a non-resident and are in his possession at his domicile at the time of his death."<sup>23</sup> On the other hand, bonds, mortgages and other securities of a nonresident, kept within the state habitually for investment or safekeeping, are subject to the inheritance tax of that state."<sup>24</sup>

<sup>21</sup> *Blackstone v. Miller*, 188 U. S. 189, 47 L. Ed. 439, 23 Sup. Ct. Rep. 277, affirming 171 N. Y. 682, 64 N. E. 1118. A thorough elucidation of this principle will be found in *Estate of Daly*, 100 App. Div. 373, 91 N. Y. Supp. 856, affirmed, 182 N. Y. 524, 74 N. E. 1116. In *Estate of Horn*, 39 Misc. Rep. 133, 78 N. Y. Supp. 979, a different view of this question seems to be taken.

In *Estate of Bentley*, 31 Misc. Rep. 656, 66 N. Y. Supp. 95, it is said: "It has never been determined that every debt of a person who does business as a banker has a situs in this state, within the meaning of the transfer tax law. A deposit made with a banking corporation or trust company or savings bank in this state, to be repaid on checks or drafts in writing presented to the corporation at its place of business in this state, and not otherwise, is taxable here, as was said *Estate of Houdayer*, 150 N. Y. 37, 55 Am. St. Rep. 642, 34 L. R. A. 235, 44 N. E. 718, 'because the owner must come here to get it.' The test prescribed in the case cited excludes from taxability a debt due to a nonresident decedent by a nonresident debtor."

<sup>22</sup> *Dodge County v. Burns*, 89 Neb. 534, 35 L. R. A., N. S., 877, 131 N. W. 922.

<sup>23</sup> *Estate of Rogers*, 149 Mich. 305, 119 Am. St. Rep. 677, 11 L. R. A., N. S., 1134, 112 N. W. 931.

<sup>24</sup> *Estate of Romaine*, 127 N. Y. 80, 12 L. R. A. 401, 27 N. E. 759; *Matter of Clark*, 2 Con. 183, 9 N. Y. Supp. 444. In *Matter of Tulane*,

A leading decision on this point is the *Romaine* case,<sup>51</sup> decided by the New York court of appeals. The Pennsylvania court,<sup>52</sup> in holding that stocks, bonds and mortgages of a nonresident, which had always been held by an agent in Pennsylvania for investment and reinvestment, were subject to the Pennsylvania tax, quoted with approval this language from the *Romaine* case: "Where, however, the money of a nonrésident is invested in this state as it was by Mr. Romaine in the bond and mortgage in question, and in deposits made by him in savings banks, or where the property of a nonresident is habitually kept even for safety in this state, we think the statute applies, both in letter and spirit. Such property is within the state in every reasonable sense, receives the protection of its laws and has every advantage from government, for the support of which taxes are laid, that it would have if it belonged to a resident."

That promissory notes have an independent situs of their own, and their transfer is properly taxed where they are located, is well illustrated in a recent New York case. A resident of Connecticut died, owning promissory notes which then were, and for some time prior thereto had been, in a safe deposit box in the city of New York. Some of the notes were made by residents and some by nonresidents of New York, and all of them were secured by property outside of that state. It was decided that they were subject to the transfer tax act of New York.<sup>53</sup> In the course of its opinion, the court quotes approvingly the following

51 Hun, 213, 4 N. Y. Supp. 36, the court seems to have departed from this doctrine, by holding that property deposited with a safe deposit company in New York by a resident of another state is not liable to the New York transfer tax upon his dying intestate at his domicile.

<sup>52</sup> See next preceding citation.

<sup>53</sup> *Estate of Lewis*, 203 Pa. 211, 52 Atl. 205.

<sup>54</sup> *Estate of Tiffany*, 143 App. Div. 327, 128 N. Y. Supp. 106, affirmed, 202 N. Y. 550, 95 N. E. 1140.

language of Justice Vann: " "The law clearly distinguishes 'written instruments themselves' from the 'rights or interests to which they relate,' and makes either taxable. There is obvious propriety in subjecting the instrument of transfer to a transfer tax when it is left in this state for safekeeping. It is subject to the jurisdiction of our laws, and hence is within the intent of the transfer tax act. When the design of the legislature is to tax the transfer of everything that it has power to tax, there is no inconsistency in taxing in one form, if another is not available. Indeed, perfect consistency is not always practicable in a scheme of taxation that is intended to let nothing escape that can be owned or transferred. Thus the legislature intended, as I think, to repeal the maxim, 'Mobilia personam sequuntur,' so far as it was an obstacle and to leave it unchanged so far as it was an aid to the imposition of a transfer tax upon all property in any respect subject to the laws of this state." Continuing the court quotes with approval this language from Justice Holmes: " "We perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the state at the time of the death. The maxim, 'Mobilia sequuntur personam,' has no more truth in the one case than in the other. When logic and the policy of a state conflict with a fiction due to historical tradition, the fiction must give way. Bonds and negotiable instruments are more than merely evidences of debt. The debt is inseparable from the paper which declares and constitutes it."

<sup>22</sup> *Matter of Whiting*, 150 N. Y. 27, 55 Am. St. Rep. 640, 34 L. R. A. 232, 44 N. E. 715.

<sup>23</sup> *Blackstone v. Miller*, 188 U. S. 189, 47 L. Ed. 439, 23 Sup. Ct. Rep. 277.

American securities which pass partly under a will executed abroad by an alien, and partly under the intestate laws of Spain, are not subject to the transfer tax imposed by the war revenue act of 1898, upon personal property that passes "either by will or by the intestate laws of any state or territory," for the expression "passing by will" is limited by the subsequent expression "or by the intestate laws of any state or territory," as appears from the provision of section 30 for the payment of the tax to the collector of the district of which the decedent was a resident.<sup>40</sup>

**§ 180. Notes Secured by Mortgage on Real Estate.** Notes in the possession of the owner at his domicile in one state, and secured by mortgage on real estate situated in another state, are, upon the owner's death, subject to the inheritance tax of the latter state; and it seems to be immaterial whether the mortgage is regarded as conveying the legal title or as merely creating a lien, or whether the interest mortgaged is a legal or an equitable interest. The fact that the laws of the state where the real property is situated must be invoked for the preservation and enforcement of rights under the mortgage is an important consideration leading to this result. Aside from that circumstance, however, it is to be noted that the debt, which is the obligation of the debtor to pay, and the real estate, which is the security for the payment of the debt, are individual parts of a single valuable property in the mortgagee, which may be made available in different ways. The debt belongs with the mortgage, and it must coexist to give the mortgage validity. For that purpose it has a situs within the jurisdiction of the state where the real estate lies.<sup>41</sup>

<sup>40</sup> *Eidman v. Martinez*, 184 U. S. 578, 46 L. Ed. 697, 22 Sup. Ct. Rep. 515.

<sup>41</sup> *Kinney v. Stevens*, 207 Mass. 368, Ann. Cas. 1912A, 902, 35 L. R. A., N. S., 784, 93 N. E. 586; *Estate of Rogers*, 149 Mich. 305, 119

On the other hand, bonds and notes held by a resident of one state and secured by mortgage on real property in another state have been held taxable in the former state—the domicile of the owner—on the theory that the transmission on the death of the owner is governed by the law of his domicile.<sup>42</sup> Where the decedent was domiciled in Massachusetts, and the bonds were in the hands of his agent in New York, while the mortgaged land was situated in New Hampshire, the bonds were held liable to the Massachusetts collateral inheritance tax.<sup>43</sup>

The tax upon the succession to real estate in Massachusetts, belonging to a decedent in another state and subject to a mortgage, is taxable only upon the value of the property above the mortgage. This seems to be upon the ground that what passes at the death of the mortgagor is only the value of his interest, which is the value of the real estate less the amount of the debt that is a charge upon it. This is equivalent to affirming that, upon the death of the mortgagee, his interest in the real estate, to the amount of his debt, would pass in succession to his representatives.<sup>44</sup>

Am. St. Rep. 677, 11 L. R. A., N. S., 1134, 112 N. W. 931. In *Estate of Merriman*, 147 Mich. 630, 118 Am. St. Rep. 561, 11 Ann. Cas. 119, 9 L. R. A., N. S., 1104, 111 N. W. 196, it is adjudged that a debt secured by mortgage on real estate situated in Michigan is subject to the succession tax of that state, although the mortgagee was a resident of New Jersey and up to the time of his death had the note and mortgage in his possession there.

Bonds of an individual secured by mortgage on land in New York, but kept by the nonresident owner in good faith at his domicile outside the state have been thought not subject to the New York transfer tax: *Estate of Preston*, 37 Misc. Rep. 236, 75 N. Y. Supp. 251.

<sup>42</sup> *Frothingham v. Shaw*, 175 Mass. 59, 78 Am. St. Rep. 475, 55 N. E. 623; *Estate of Corning*, 3 Misc. Rep. 160; 23 N. Y. Supp. 285; *Estate of Gibbs*, 60 Misc. Rep. 645, 113 N. Y. Supp. 939.

<sup>43</sup> *Frothingham v. Shaw*, 175 Mass. 59, 78 Am. St. Rep. 475, 55 N. E. 623.

<sup>44</sup> *McCurdy v. McCurdy*, 197 Mass. 248, 14 Ann. Cas. 859, 16 L. R. A., N. S., 329, 83 N. E. 881; *Kinney v. Stevens*, 207 Mass. 368, Ann. Cas. 1912A, 902, 35 L. R. A., N. S., 784, 93 N. E. 586.

The inheritance tax may be levied in Michigan upon notes and mortgages of, and contracts relating to, land in that state, owned by a resident of another state, but which notes and mortgages have always been kept in Michigan for the purpose of collection and reinvestment, though they may have been temporarily taken to New York.<sup>45</sup>

The Vermont statute taxes the proceeds of notes against nonresidents, secured by a mortgage on real property without the state, held within the state by an intestate at the time of his death, and collected by the resident administrator beyond the state, no tax having been paid on account thereof in any other state.<sup>46</sup>

**§ 181. Corporate Bonds.**—The bonds of a domestic corporation, actually kept within the state in safe deposit or otherwise, at the time of the death of the nonresident owner, are there subject to the inheritance tax. This much is definitely settled by the decisions.<sup>47</sup> But it is not so clear that bonds of a foreign corporation, owned by a nonresident, but kept within the state, can there be subjected to the tax. Some of the New York decisions are to the effect that such bonds, as well as the bonds of domestic corporations, are liable to the inheritance tax;<sup>48</sup> and so, possibly, are the decisions of some other states.<sup>49</sup> But other decisions,

<sup>45</sup> Estate of Stanton, 142 Mich. 491, 105 N. W. 1128.

<sup>46</sup> Estate of Howard, 80 Vt. 489, 68 Atl. 513.

<sup>47</sup> People v. Griffith, 245 Ill. 532, 92 N. E. 313; Estate of Burden, 47 Misc. Rep. 329, 95 N. Y. Supp. 972; Estate of Pullman, 46 App. Div. 574, 62 N. Y. Supp. 395. In the last case cited it is held that stocks and bonds of a New York corporation, pledged as security for debts to New York creditors, are not taxable under the transfer tax law before the debts are paid.

<sup>48</sup> Estate of Whiting, 150 N. Y. 27, 55 Am. St. Rep. 640, 34 L. R. A. 232, 44 N. E. 715; Estate of Morgan, 150 N. Y. 35, 44 N. E. 1126.

<sup>49</sup> State v. Dalrymple, 70 Md. 294, 3 L. R. A. 372, 17 Atl. 82; Callahan v. Woodbridge, 171 Mass. 595, 51 N. E. 176; Estate of Lewis,

both of the courts of New York and of other states, take a contrary view.<sup>50</sup> The bonds of a local corpora-

203 Pa. 211, 52 Atl. 205. In these cases bonds owned by nonresidents were held taxable, but it does not clearly appear that the courts intended to apply the rule to the bonds of foreign as well as domestic corporations.

<sup>50</sup> *People v. Griffith*, 245 Ill. 532, 92 N. E. 313; *Estate of Gibbes*, 84 App. Div. 510, 83 N. Y. Supp. 53, affirmed, 176 N. Y. 565, 68 N. E. 1117. See, also, *Estate of Hillman*, 116 App. Div. 186, 101 N. Y. Supp. 640.

In *Estate of Schermerhorn*, 50 Misc. Rep. 233, 100 N. Y. Supp. 480, where it is decided that the United States bonds belonging to a non-resident, but physically within the state at the time of his death, are not property within the transfer law in October, 1891, the court said: "The recent decision in *Estate of Gibbes*, 84 App. Div. 510, 83 N. Y. Supp. 53, affirmed, 176 N. Y. 565, 68 N. E. 1117, was upon the same statutes which are applicable to this case, and the principles there applied must control here. It was there determined that a bond of a corporation created by the laws of a sister state was the mere evidence of a contract obligation or right of action, and was not, prior to the enactment of section 4, chapter 677, page 1486 of the Laws of 1892, known as the statutory construction law, and within the meaning of the transfer tax law, 'property,' the presence of which in this state would render transfers from its deceased nonresident owner taxable. The statutory construction law, in defining personal property as including 'all written instruments themselves, as distinguished from the rights and interests to which they relate,' was not merely declaratory of the law, but effected a change which was the foundation of a decision in *Estate of Whiting*, 150 N. Y. 27, 55 Am. St. Rep. 640, 34 L. R. A. 232, 44 N. E. 715; *Estate of Morgan*, 150 N. Y. 35, 44 N. E. 1126, under which the bonds of foreign corporations actually within the state belonging to nonresident decedents have since been included in transfer tax appraisals. Applying this rule, I must determine that United States bonds were not in October, 1891, property within the meaning of the tax law, but were, under the law then existing and applicable, obligations for the payment of money, or evidences of a claim against the United States. They can be taxed only according to the rules controlling the taxation of rights of action belonging to nonresident decedents, and the situs of such a right of action is, for purposes of taxation, the domicile of the debtor. In the case of the bond of a corporation that situs has been held to be the place under the laws of which the debtor corporation was created, and by which laws the validity of the debt would be determined and its payment enforced: *Estate of Clinch*, 180 N. Y. 300, 73 N. E. 35; *Estate of Daly*, 100 App. Div. 373, 91 N. Y. Supp. 858, affirmed, 182 N. Y. 524, 74 N. E. 1116. 'Power over the person of the debtor confers jurisdiction' to



tion, owned by a nonresident and in his possession at the time of his death at the place of his domicile, have been held not "property within the state" of the corporation, and hence not there subject to the inheritance tax.<sup>51</sup>

**§ 182. Stock in Domestic Corporations.**—While the law under some of the earlier statutes and decisions may incline to the contrary,<sup>52</sup> it is now generally conceded that stock in a domestic corporation, whether passing by will or descent, is subject to the inheritance tax of the state, notwithstanding the owner is a nonresident. Although shares of stock in a domestic corporation are owned by a nonresident, they represent an interest in property which is within the jurisdiction of the state for the purpose of taxation, upon its transfer by operation of law or act of the owner. The assessment is computed upon the value of the interest of the owner, at the time of his decease, in the whole of the corporate property, as evidenced by the number of shares he held.<sup>53</sup>

impose the tax upon the debt: *Blackstone v. Miller*, 188 U. S. 189, 47 L. Ed. 439, 23 Sup. Ct. Rep. 277. It is quite clear that the state of New York has no power over the United States, and that the obligations of the United States were not created by the laws of the state, nor can the validity of those debts be determined by or their payment enforced by our courts. Without determining, therefore, that the United States is for all purposes a corporation foreign to this state, it must follow that its debts, treated apart from the evidences hereof, are taxable in this state only when the debt of the foreign corporation is taxable."

<sup>51</sup> *Estate of Bronson*, 150 N. Y. 1, 55 Am. St. Rep. 632, 34 L. R. A. 238, 44 N. E. 707.

<sup>52</sup> *Estate of Enston*, 113 N. Y. 174, 3 L. R. A. 464, 21 N. E. 87; *Matter of Hall*, 55 Hun, 608, 8 N. Y. Supp. 556; *Kintzing v. Hutchinson*, Fed. Cas. No. 7834.

<sup>53</sup> *People v. Griffith*, 245 Ill. 532, 92 N. E. 313; *Estate of Palmer*, 183 N. Y. 238, 76 N. E. 16; *Estate of Leavitt*, 4 N. Y. Supp. 179; *Estate of Pullman*, 48 App. Div. 574, 62 N. Y. Supp. 395; *Estate of Alexander (Pa.)*, 3 Clark, 87.

The authorities seem to be at variance on this question, when the stock certificates are in the possession of the nonresident owner without the state at the time of his death. The New York courts have come to the conclusion that shares of stock in corporations incorporated under the laws of that state, which are held by, and represented by certificates in the possession of, a nonresident at the time of his death at his domicile outside of the state of New York, and which then pass to nonresidents, are subject to taxation under the transfer tax act of 1892. Justice Gray, speaking for the court of appeals, in announcing this doctrine, distinguishes between the attitude of holders of shares of capital stock and holders of bonds, toward the corporation that issued them. While the bondholders are simply creditors, whose concern with the corporation is limited to the fulfillment of its particular obligation, the shareholders are the persons who are interested in the operation of the corporate property and franchises, and their shares actually represent undivided interests in the corporate enterprise. Each share represents a distinct interest in the whole of the corporate property; it is property within the broad meaning of that term. In legal contemplation the property of the shareholder is either where the corporation exists, or at his domicile, accordingly as it is considered as consisting in his contractual rights or in his proprietary interest in the corporation. In the case of bonds, they represent only a property in the debt, and that follows the person of the creditor. Therefore it cannot be said, if the property represented by a share of stock has its legal situs where the corporation exists, or at the holder's domicile, that the state is without jurisdiction for purposes of taxation. As personalty, the legal situs does follow the person of the owner; but the property is in his right to share in the net produce, and, eventually, in the net residuum of the corporate assets, resulting from liqui-

dation. That right, as a chose in action, must necessarily follow the shareholder's person; but that does not exclude the idea that the property, as to which the right relates and which is, in effect, a distinct interest in the corporate property, is not within the jurisdiction of the state for the purpose of assessment upon its transfer through the operation of law or the act of its owner. The attempt to tax a debt of the corporation to a nonresident of the state, as being property within the state, is one thing, and the imposition of a tax upon the transfer of any interest in or right to the corporate property itself is another thing. The corporation is the creature of state laws, and those who become its members, as shareholders, are subject to the operation of those laws, with respect to any limitation upon their property rights and with respect to the right to assess their property interests for purposes of taxation.<sup>54</sup>

Here is manifested a departure from the fiction that the situs of personal property follows the domicile of the owner, and a reliance upon the true or actual situs of the property. If it should seem that the real situs of stock is the place where the certificate is located, it is to be remembered that the certificate is not the prop-

<sup>54</sup> *Matter of Bronson*, 150 N. Y. 1, 55 Am. St. Rep. 632, 34 L. R. A. 238, 44 N. E. 707. See, too, *Estate of Palmer*, 183 N. Y. 238, 76 N. E. 16; *Estate of Bushnell*, 73 App. Div. 325, 77 N. Y. Supp. 4, affirmed, 172 N. Y. 649, 65 N. E. 1115.

In *Estate of Newcomb*, 71 App. Div. 606, 76 N. Y. Supp. 222, affirmed, 172 N. Y. 608, 64 N. E. 1123, the estate of a nonresident decedent in corporations organized under the New York statutes, represented by certificates of stock standing on the corporation books in the names of the stockholders who purchased the stock for the decedent, which have been signed by the brokers in blank and delivered to the decedent, is held subject to the transfer tax.

It has been affirmed that when a national bank does business in a state, the estate of a nonresident stockholder is subject to the inheritance tax, notwithstanding the certificate of stock is without the state: *Estate of Cushing*, 40 Misc. Rep. 505, 82 N. Y. Supp. 795.

erty, but merely the evidence of the intangible right located with the corporation itself. The nonresident shareholder has invested his funds in a state wherein the corporation is situated, and clearly should submit to the burdens imposed by the laws of that state along with its inhabitants; he can claim no exemption for his investment that they cannot claim. In a sense the corporation is a citizen of the state, having an abiding place there comparable to the domicile of a natural person; and its shares of stock are property there, regardless of the residence of the shareholder or the location of the certificates.<sup>54a</sup>

The New Jersey courts do not seem to have at all times entertained the same opinion on this question. On one occasion the idea prevailed that the shares of stock in a corporation organized under the laws of that state are, for purposes of inheritance taxation, property within the state without regard to the place of residence of the stockholder, or the place of deposit of the certificates, or the location of the property of the company, or the place where its business is carried on. The following is an extract from the opinion of the court:

“In this country, where the general doctrine of the state courts is that the situs of property governs its liability to succession taxes, the weight of authority is that stock in a corporation is subject to the imposition of succession taxes by the state that created the corporation, and that in this regard the place of residence of the deceased stockholder is immaterial. In the case of *Greves v. Shaw*,<sup>55</sup> Knowlton, J., said: ‘There can be no doubt that stock in a corporation organized under the laws of this commonwealth is property within the jurisdiction of the commonwealth. Such a corporation,

<sup>54a</sup> *Greves v. Shaw*, 173 Mass. 205, 53 N. E. 372; *Neilson v. Russell*, 76 N. J. L. 27, 69 Atl. 476.

<sup>55</sup> *Greves v. Shaw*, 173 Mass. 205, 53 N. E. 372.

being in a sense a citizen of this state, and having an abiding place here akin to the domicile of a natural person, is subject to the jurisdiction of the commonwealth, and is in fact within the commonwealth. The stockholders are the proprietors of the corporation, which is itself the proprietor of the property owned and used for the ultimate benefit of the stockholders.' In the later case of *Kingsbury v. Chapin*,<sup>86</sup> Knowlton, Chief Justice, speaking of a succession tax upon shares in a railroad corporation organized under the same name by the laws of that state and of another state, said: 'In a sense such a railroad company is a domestic corporation in each of the states where it is incorporated. We think that stock in such a corporation is "property within the jurisdiction of this commonwealth" under the language of our statute authorizing taxation of collateral inheritances. We think it is property within the jurisdiction of the commonwealth in a constitutional sense such as to enable the state to subject it to taxation as against a nonresident owner.' "

Continuing, the court then added: "In a somewhat more precise form our conclusion is that stock in a New Jersey corporation, i. e., the proprietary right that a stockholder has in a corporation of this state, relating as such proprietary right does to an anomalous species of intangible property that owes its existence solely to the laws of this state, is itself property within this state in the sense that it has an inherent and abiding situs here for all matters appertaining to sovereignty, among which is the levying of an impost upon the devolution of such property upon the death of its owner; and, furthermore, that such intangible proprietary right, although it is personal property as regards the acts of its owner, is from its nature and

<sup>86</sup> *Kingsbury v. Chapin*, 196 Mass. 533, 13 Ann. Cas. 738, 82 N. E. 700.

because of its inherent situs unaffected as regards the acts of the sovereign by the circumstance that the domicile of its former owner was elsewhere than in this state. In fine, we think that the sovereign power to which a corporation owes its existence can never be wholly detached from it, and is not estranged from its creature by the circumstances that the owners of shares in the property thus created reside in one place rather than in another. The metaphor that pictures the state as giving birth to a corporation is a figure more bold than accurate, for (to carry out the metaphor) the natal cord between the two is never completely severed. Acts of ownership that do not trench upon this vital union do not call for the recognition of its existence, but acts of sovereignty that are based upon its existence demand its recognition. In effect the anomalous species of incorporeal personal property we are considering has a dual situs accordingly as it is regarded from the standpoint of ownership or from that of sovereignty. As to the former the situs changes with the domicile of the owner, but as to the latter the situs is always within the dominion of the sovereign. In this latter sense, and for the purposes of the legislation under review, the situs of every share of stock in every company incorporated by this state, and coming within the purview of the act, is within the state of New Jersey. It may be superfluous to add that the whereabouts of the certificates of stock is immaterial upon the question of the legal situs of the property represented by them. Such certificates being mere evidences of ownership, their place of deposit no more determines the situs of the personal property of which they are a muniment of title than the place where a deed of conveyance is kept would determine the situs of the real property described in it." <sup>57</sup>

<sup>57</sup> Neilson v. Russell, 76 N. J. L. 27, 69 Atl. 476; Estate of Delano, 74 N. J. Eq. 365, 69 Atl. 482.

Subsequently, however, the New Jersey court has decided that stock in a New Jersey corporation belonging to a testator domiciled in England is not subject to the inheritance tax imposed by the act of 1894;<sup>58</sup> and that stock in a New Jersey corporation belonging to a testator domiciled in Monaco is not subject to the inheritance tax imposed by such act of 1894, which provides that upon all property within the state transferred by inheritance, bequest or devise, an inheritance tax may be imposed, since the statute applies to the general succession of the whole estate, and not to the particular succession to a special portion of the estate.<sup>59</sup>

But under the act of 1906, which contains a provision that a tax may be imposed "when the transfer is by will or intestate law of property within the state, and the decedent was a nonresident of the state at the time of his death," it has recently been decided that shares of stock in a New Jersey corporation, belonging to a resident of Rhode Island and passing by his will, are subject to the inheritance tax.<sup>60</sup>

The New Hampshire court puts forth these reasons for holding the shares in a domestic corporation, owned by a nonresident decedent, subject to inheritance taxation: "The court in Massachusetts,<sup>61</sup> in construing a statute containing provisions substantially the same as our own, has so held; and a like holding has been made by the court of appeals in New York.<sup>62</sup> The line of argument in these decisions is that the probate court

<sup>58</sup> Neilson v. Russell, 76 N. J. L. 655, 131 Am. St. Rep. 673, 19 L. R. A., N. S., 887, 71 Atl. 286.

<sup>59</sup> Astor v. State, 75 N. J. Eq. 303, 72 Atl. 78.

<sup>60</sup> Dixon v. Russell, 78 N. J. L. 296, 73 Atl. 51.

<sup>61</sup> Greves v. Shaw, 173 Mass. 205, 53 N. E. 372; Moody v. Shaw, 173 Mass. 375, 53 N. E. 891; Callahan v. Woodbridge, 171 Mass. 595, 51 N. E. 176; Mass. Laws 1891, p. 1028, c. 425.

<sup>62</sup> In re Bronson's Estate, 150 N. Y. 1, 55 Am. St. Rep. 632, 34 L. R. A. 238, 44 N. E. 707; In re Palmer's Estate, 183 N. Y. 238, 76 N. E. 16.

in the state where the property of the nonresident decedent is situated has jurisdiction of the settlement of the estate there located that it may collect the assets within the state, pay the debts, make final distribution of the property, pay it over according to the will, or in its discretion cause it to be transmitted to the executor or administrator, if any, in any state or country where the deceased has his domicile, for final distribution; that the statutes imposing succession taxes contemplate that property of nonresident decedents will be administered by an executor or administrator appointed in the state where it is located; and that the right and title of a foreign executor or administrator are subject to the prior right of the state to have the property so administered as to yield the tax.”<sup>65</sup>

The New Hampshire decision,<sup>66</sup> and also the earlier New Jersey decision,<sup>67</sup> have been cited approvingly by the Nebraska court.<sup>68</sup> The Massachusetts, New York, and earlier New Jersey cases have also been approved by the Iowa court, holding that while negotiable instruments, certificates of deposit, and other evidences of debt held by a nonresident of the state are not subject to the collateral inheritance tax, the nonresident owner of shares of stock in a domestic corporation has an interest in the property of the corporation which is subject to the tax.<sup>69</sup>

Under the Pennsylvania statute of 1887, the interest of a nonresident deceased member of a limited partnership association is liable to the collateral inheritance tax, where the real and personal property of the association is situated within the state.<sup>70</sup>

<sup>65</sup> *Gardiner v. Carter*, 74 N. H. 507, 69 Atl. 939.

<sup>66</sup> *Gardiner v. Carter*, 74 N. H. 507, 69 Atl. 939.

<sup>67</sup> *Neilson v. Russell*, 76 N. J. L. 27, 69 Atl. 476.

<sup>68</sup> *In re Douglas County*, 84 Neb. 506, 121 N. W. 593.

<sup>69</sup> *Estate of Culver*, 145 Iowa, 1, 123 N. W. 743.

<sup>70</sup> *Estate of Small*, 151 Pa. 1, 25 Atl. 23.



§ 183. **Stock in Corporation Organized in Two States.**—A legatee of shares of stock in a railroad corporation having a charter from both the state of New York and the state of Massachusetts may be required to pay the inheritance tax imposed by the statutes of Massachusetts, as a condition to his succession to stock issued under the charter of the corporation from that state.<sup>69</sup> And stock of a railroad corporation organized, doing business, and owning property in Massachusetts and in neighboring states, but having only a single issue of stock, is “property within the jurisdiction of the commonwealth” of Massachusetts under the statutes of that state authorizing taxation of collateral inheritances, so as to enable the state to subject it to taxation as against a nonresident owner. For purposes of this taxation, the stock should be valued on the basis of representing only that portion of the property of the corporation situated within the state.<sup>70</sup> The Massachusetts court in this case approves the decision of the New York court in *Matter of Cooley*.<sup>71</sup> That case presented the question whether stock of a nonresident testator in the Boston and Albany Railroad Company should be taxed under the inheritance law of New York at its value, treating the stock as representing all the property of the doubly incorporated New York and Massachusetts corporation, or at a less value, treating it as representing only that portion of the property which belonged in the state of New York. It was held that the payment should be on the latter theory. The court said:

“The authorities are asserting jurisdiction of and assessing his stock only because it is held in the New

<sup>69</sup> *Moody v. Shaw*, 173 Mass. 375, 53 N. E. 891.

<sup>70</sup> *Kingsbury v. Chapin*, 196 Mass. 533, 13 Ann. Cas. 738, 82 N. E. 700.

<sup>71</sup> *Matter of Cooley*, 186 N. Y. 220, 10 L. R. A., N. S., 1010, 78 N. E. 939, distinguishing *Estate of Palmer*, 183 N. Y. 238, 76 N. E. 16.

York corporation of the Boston and Albany Railroad Company. But we know that said company is also incorporated as a Massachusetts corporation, and, presumably by virtue of such latter incorporation, it has the same powers of owning and managing corporate property which it possesses as a New York corporation. In fact, the location of physical property and the exercise of various corporate functions give greater importance to the Massachusetts than to the New York corporation, and the problem is whether, for the purpose of levying a tax upon decedent's stock upon the theory that it is held in and under the New York corporation, we ought to say that such latter corporation owns and holds all of the property of the consolidated corporation, wherever situated, thus entirely ignoring the existence of and the ownership of property by the Massachusetts corporation. It needs no particular illumination to demonstrate that, if we take such a view, it will clearly pave the way to a corresponding view by the authorities and courts of Massachusetts that the corporation in that state owns all of the corporate property, wherever situated, and we shall then further and directly be led to the unreasonable and illogical result that one set of property is at the same time solely and exclusively owned by two different corporations, and that a person holding stock should be assessed upon the full value of his stock in each jurisdiction. . . . We shall have each state exacting full compensation upon one succession, and a clear case of double taxation. And if the corporation had been compelled, for sufficient reasons, to take out incorporation in six to twenty other states, each one of them might take the same view and insist upon the same exaction, until the value of the property was in whole or large proportion exhausted in paying for the privilege of succession to it. While undoubtedly the legislative authority is potent enough to prescribe and en-

force double taxation, it is plain that, measured by ordinary principles of justice, the result suggested would be inequitable and might be seriously burdensome."

The doctrine of the Massachusetts and New York courts in the *Kingsbury* and *Cooley* cases<sup>72</sup> to the effect that where a corporation is chartered in two or more states under the same name, has but one issue of stock, and its property and franchises in the different states constitute the value of the stock, the measure of the inheritance tax is such proportionate part of the value of the stock as the franchises and property of the corporation within the state is of the property and franchises in the several states in which the corporation is chartered, has been approved in *New Hampshire*.<sup>73</sup>

Where a railroad has lines in states adjoining one in which an inheritance tax is being levied against the estate of a nonresident decedent, the capital stock should, on appraisement, be apportioned, in ascertaining the proportion of the property within the state, on the basis of the total mileage, including branch lines.<sup>73a</sup>

**§ 184. Stock in Foreign Corporations.**—Stock in a foreign corporation, held by a resident of the state at the time of his death, is subject to the inheritance tax of that state, on the theory that the legal situs of the stock is, as personalty, at the domicile of the owner.<sup>74</sup>

<sup>72</sup> See notes 70 and 71, ante.

<sup>73</sup> *Gardiner v. Carter*, 74 N. H. 507, 69 Atl. 939.

<sup>73a</sup> *Estate of Thayer*, 58 Misc. Rep. 117, 110 N. Y. Supp. 751.

<sup>74</sup> *Estate of Merriam*, 141 N. Y. 479, 36 N. E. 505; *Estate of Short*, 16 Pa. 63.

The supreme court of New York, however, on one occasion, decided that stock in a corporation organized in another state, and there having its headquarters and paying its dividends, is not subject to the New York transfer tax, although the owner resided in New York at the time of his death: *Estate of Thomas*, 3 Misc. Rep. 383, 24 N. Y. Supp. 713. The court thought the stock certificates were not property within the state, because stock certificates are not themselves the

Sometimes the case is presented of stock in a foreign corporation, kept or deposited within the state, but owned by a nonresident. When the question of the taxability of such stock first came before the New York court of appeals, it was affirmed that the legal situs of that species of property represented by certificates of corporate stock is where the corporation exists or where the shareholder has his domicile, and hence that stocks and bonds of a foreign corporation, belonging to a nonresident testator and at the time of his death deposited in New York, were not subject to the inheritance tax of that state.<sup>75</sup> But this is no longer the law in New York, for it has since been decided that where a nonresident placed stock in a foreign corporation with a New York trust company to be sold, and after the sale allowed the proceeds to remain in the hands of this company under an agreement that it should hold the fund in trust, paying interest thereon, and deliver the fund to him on two days' notice, such property was within the state and subject to the transfer tax upon his death.<sup>76</sup>

property, but evidences of the rights of the holder in the property, of the corporation situated in the foreign state.

<sup>75</sup> *Estate of James*, 144 N. Y. 6, 38 N. E. 961. This decision was followed in *Matter of Bishop*, 82 App. Div. 112, 81 N. Y. Supp. 474, where it is held that, as stocks in a foreign corporation owned by a nonresident are not taxable in New York, there is no reason why the executor should make inventories of them or exhibit the condition of the estate as respects them.

<sup>76</sup> *Estate of Blackstone*, 69 App. Div. 127, 74 N. Y. Supp. 508, affirmed, 171 N. Y. 682, 64 N. E. 1118, 188 U. S. 206, 47 L. Ed. 439, 23 Sup. Ct. Rep. 277.

## CHAPTER XII.

## TRANSFERS OF PROPERTY TO ALIENS.

- § 190. In Absence of Treaty Regulations.
- § 191. Under Treaties, in General.
- § 192. Under Treaty With France.
- § 193. Under Treaty With Bavaria.
- § 194. Under Treaty With Wurttemberg.
- § 195. Under Treaty With Italy—"Most Favored Nation" Clause.
- § 196. Under Treaty With Spain.
- § 197. Under Treaty With Norway and Sweden.

§ 190. **In Absence of Treaty Regulations.**—Between the United States and some of the nations of the world are treaty provisions affecting, in some degree, the transmission of property situated in this country to alien heirs, devisees, and legatees, and the taxation of the same. In the absence of any treaty restrictions, however, it is clear that a state, in the exercise of its power to regulate the manner and terms upon which property, real or personal, within its dominion shall be transmitted by will or succession to aliens, may impose an inheritance tax on such transmissions. There can be no valid objection to such a tax, whether imposed upon citizens and aliens alike or upon aliens exclusively. This was determined, in the case of an early Louisiana statute, by the supreme court of that state and also by the supreme court of the United States.<sup>1</sup>

<sup>1</sup> Section 24, ante. There is nothing in the Louisiana act of 1894 making the payment of the succession or inheritance tax by foreigners a condition precedent to a right of inheritance; the law permits the foreigner to inherit, but, having inherited, charges him with the tax: *Succession of Sala*, 50 La. Ann. 1099, 24 South. 674.

An alien who has claimed the benefit of a devise, and continues to enjoy its use, is estopped to set up alienage as a ground for recovering back the tax paid on the succession: *Scholey v. Rew*, 90 U. S. (23 Wall.) 331, 23 L. Ed. 99.

A state is entitled to the tax imposed upon legacies to aliens, although the statute imposing it is, after the death of the testator, repealed.<sup>2</sup> But such statute is, unless the intention of the legislature clearly appears otherwise, prospective merely, and does not apply to the estate of a decedent who died before its enactment.<sup>3</sup> Likewise, a treaty, conflicting to some extent with the statute, is not operative as to an estate whose owner died prior to the making of the treaty.<sup>4</sup>

§ 191. **Under Treaties, in General.**—It seems to be conceded that the acquisition of property in this country by aliens is, to some extent, a proper subject for treaty regulation; and that when the United States has entered into a treaty with another nation, according to citizens of the latter privileges enjoyed by citizens of the former in the matter of acquiring, holding and transmitting property, and providing that they shall not be required to pay inheritance or succession taxes which citizens of the United States are not compelled to pay, the treaty will be regarded as the supreme law, and state statutes conflicting with it should yield.<sup>5</sup> Some treaties are express and clear on the question of inheritance taxation; others leave room for interpretation and conjecture.<sup>6</sup>

§ 192. **Under Treaty With France.**—The treaty of 1853 between the United States and France declares that Frenchmen shall not be subjected to inheritance

<sup>2</sup> *Arnaud v. His Executor*, 3 La. 336; *Quessart v. Canouge*, 3 La. 560.

<sup>3</sup> *Succession of Deyraud*, 9 Rob. (La.) 357; *Succession of Oyon*, 6 Rob. (La.) 504, 41 Am. Dec. 274.

<sup>4</sup> *Prevost v. Greneaux*, 60 U. S. (19 How.) 1, 15 L. Ed. 572; *Succession of Schaffer*, 13 La. Ann. 113.

<sup>5</sup> See succeeding paragraphs of this chapter.

<sup>6</sup> Extracts from various treaties are set forth in *Succession of Rixner*, 48 La. Ann. 552, 32 L. R. A. 177, 19 South. 597.

taxes different from those paid by citizens of the United States, or to taxes which shall not be equally imposed. Since the adoption of that treaty, the Louisiana statute imposing a succession on aliens exclusively has been, as to citizens of France, inoperative. The treaty, it was said in an early decision, must be obeyed as the supreme law.<sup>7</sup> The latest utterance of the Louisiana court on the question is this:

“While the legislature of this state may have the right of prohibiting Frenchmen from possessing personal or real property by the same title and in the same manner as citizens of the United States, it has not yet thought proper to exercise that right. On the contrary, it has permitted them, up to the present time, in that respect, to stand on the same plane with our own citizens. Occupying that station, the provisions of the treaty with France declare that in no case shall they be subjected to taxes, on transfer, inheritance or any other, different from those paid by our own citizens themselves, or to taxes which shall not be equally imposed.”<sup>8</sup>

This treaty with France had no retrospective operation so as to prevent the state of Louisiana from enforcing a succession tax against a citizen of France who claimed as heir of a decedent who died prior to the time when the treaty was made.<sup>9</sup> The treaty did not go into effect until August 11, 1853, and hence had no effect upon the estate of one who died July 22, 1853.<sup>10</sup>

**§ 193. Under Treaty With Bavaria.**—The Louisiana court has given the same effect to a similar treaty

<sup>7</sup> Succession of Dufour, 10 La. Ann. 391; Succession of Amat, 18 La. Ann. 403; State v. Poydros, 9 La. Ann. 165.

<sup>8</sup> Succession of Rabasse, 49 La. Ann. 1405, 22 South. 767.

<sup>9</sup> Prevost v. Greneaux, 60 U. S. (19 How.) 1, 15 L. Ed. 572, affirming 12 La. Ann. 577.

<sup>10</sup> Succession of Schaffer, 13 La. Ann. 113.

with Bavaria, the consular convention of 1845 entered into between United States and that country, and has held that subjects of Bavaria, like citizens of France, are exempt from the ten per cent tax imposed by the Louisiana statute on successions going to aliens.<sup>11</sup>

§ 194. **Under Treaty With Wurttemberg.**—The Louisiana statute which, to use its exact language, provides that “each and every person, not being domiciliated in this state, and not being a citizen of any other state or territory in the Union, shall pay a tax of ten per cent on all sums actually received from a succession of a deceased person,” came before the supreme court of the United States in the case of a subject of Wurttemberg, and it was pointed out that the statute did not make any discrimination between citizens of the state and aliens in the same circumstances, a citizen of Louisiana domiciled abroad being subject to the tax. It was further decided that the statute did not conflict with the provision in the treaty with Wurttemberg that “the citizens or subjects of each of the contracting parties shall have power to dispose of their personal property within the states of the other, by testament, and their legatees, being citizens or subjects of the other contracting parties, shall succeed to their personal property, and may take possession thereof, paying such duties only as the inhabitants of the country, where said property lies, shall be liable to pay in like cases.” The court was of the opinion that the treaty did not regulate the testamentary dispositions of citizens or subjects of the contracting powers, in reference to property within the country of their origin or citizenship.<sup>12</sup>

The application of the New York transfer tax to a subject of Wurttemberg has been before the supreme

<sup>11</sup> *Succession of Crusius*, 19 La. Ann. 369.

<sup>12</sup> *Frederickson v. Louisiana*, 64 U. S. (23 How.) 445, 16 L. Ed. 577.



court in connection with the provision of the treaty of 1844 with that kingdom, providing that "where, on the death of any person holding real property within the territories of one party, such real property would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such citizen or subject shall be allowed the term of two years to sell the same . . . . and to withdraw the proceeds thereof . . . . exempt from all duties of detraction."

The court declares that the tax is not a detraction tax, but a succession tax, and that a subject of Wurttemberg has no more cause for complaint than he would have of the ordinary annual tax upon property; he is treated the same as our own citizens are, receiving precisely what they receive. All that is granted to him by the treaty is that the property to which he succeeds under the laws of the state shall not be taxed when he comes to take the property, or its proceeds, out of the state.<sup>18</sup>

**§ 195. Under Treaty With Italy—"Most Favored Nation" Clause.**—The treaty of 1871 between United States and Italy contains the provision: "The citizens of each of the contracting parties shall have power to dispose of their personal goods within the jurisdiction of the other, by sale, donation, testament, or otherwise; and their representatives, being citizens of the other party, shall succeed to their personal goods, whether by testament or ab intestato, and they may take possession thereof, either by themselves or others acting for them, and dispose of the same at their will, paying such duties only as the inhabitants of the country wherein such goods are, shall be subject to pay in like cases. As for the case of real estate the citizens and

<sup>18</sup> Estate of Strobel, 5 App. Div. 621, 39 N. Y. Supp. 169.

subjects of the two contracting parties shall be treated on the footing of the most favored nation." By virtue of this "most favored nation cause," it has been held in Louisiana that subjects and citizens of Italy, in inheriting real estate situate in Louisiana, are quite as much entitled to the protection of the treaty between United States and France, referred to in a preceding paragraph,<sup>14</sup> as are the subjects and citizens of France.<sup>15</sup>

§ 196. **Under Treaty With Spain.**—The treaty of 1795 between the United States and Spain provides that "the citizens and subjects of each party shall have power to dispose of their personal goods, within the jurisdiction of the other, by testament, donation or otherwise, and their representatives being subjects or citizens of the other party, shall succeed to their said personal goods, whether by testament or ab intestato, and they may take possession thereof, either by themselves or others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein the said goods are, shall be subject to pay in like cases, . . . and where, on the death of any person holding real estate within the territory of the one party, such real estate would by the laws of the land descend on a citizen or subject of the other, were he not disqualified by being an alien, such subjects shall be allowed a reasonable time to sell the same, and to withdraw the proceeds without molestation, and exempt from all rights of detraction on the part of the government of the respective states." It has been decided that this treaty provision does not prohibit the state from imposing upon Spanish citizens a succession tax for the privilege of taking real estate

<sup>14</sup> Section 192, ante.

<sup>15</sup> Succession of Rixner, 48 La. Ann. 552, 32 L. R. A. 177, 19 South. 597.

by inheritance; but it has also been decided that the statute of that state imposing a heavier legacy tax upon subjects of Spain and citizens of Louisiana residing abroad than upon resident citizens of Louisiana, conflicted with the treaty.<sup>16</sup> Said the court:

“To extend a statute imposing a succession tax upon heirs or legatees, citizens of Louisiana, who reside abroad, to Spanish heirs or legatees living in their own country, would be to take out of the treaty most of its life, leaving its benefits almost nominal. We would not feel warranted in giving to the treaty the narrow scope contended for, leading, as it would, to results evidently not contemplated. We are of the opinion that the object of the treaty was to secure the citizens or subjects of each from being discriminated against under the laws of the other for or on account of their alienship. This object would be entirely thwarted if the Spanish heirs and legatees living in Spain could be successfully discriminated against by being made to fall under the ban of statute discrimination, either actually or apparently aimed at what would be (if so aimed) only exceptional, and a very small proportion of the people of the state. Most Spanish heirs and legatees would be in that precise situation. We would hold that Spanish heirs and legatees, under the treaty, were entitled to share in the benefits accorded generally to the people of the state.”

**§ 197. Under Treaty With Norway and Sweden.**—According to a recent decision of the supreme court of Washington, a provision of the treaty between the United States and Norway and Sweden, that the subjects of the contracting parties in the respective countries may freely dispose of their goods and effects by testament, and that the heirs shall receive the succes-

<sup>16</sup> Succession of Sala, 50 La. Ann. 1009, 24 South. 674.

sion without having occasion to take out letters of naturalization, will prevent a state of the Union from imposing any higher inheritance tax upon property devised or bequeathed by one of its citizens to a citizen of Norway or Sweden than it imposes in case of devises or bequests to its own citizens of the same degree of relationship to the testator under similar circumstances, and it is immaterial that the treaty also provides that the states shall be at liberty to make respecting this matter such laws as they think proper.<sup>17</sup> In the course of its opinion the court has this to say:

“The language of the treaty giving the citizens of the contracting parties the right to dispose of their goods and effects by testament, and the right to receive the succession, must mean the right to so give and receive as such right may be defined by the general laws in force in the country where the property is situated. It could not mean otherwise, because there is no law to which we may turn, or which the contracting parties could have in view, in the making of the treaty, defining testamentary and succession rights, save the laws of the respective countries. There is no universal or international law of succession to property.

“In order, then, to give force and effect to the treaty, and avoid the destruction of the very end it was plainly intended to accomplish, we must conclude that the testamentary and inheritance rights secured thereby are such that they cannot be impaired, except as such rights and privileges of citizens may be impaired by the laws of their own country. The enforcement of a law which would have the effect of burdening the succession of property passing to the citizens of Sweden and Norway, greater than that imposed upon property passing to our own citizens, would, in our

<sup>17</sup> In re Stixrud, 58 Wash. 339, Ann. Cas. 1912A, 850, 33 L. E. A., N. S., 632, 109 Pac. 343.

opinion, be a plain violation of the rights secured by this treaty. The treaty must be held to mean that so far as the right of succession to property from deceased persons is concerned, the citizens of each country stand on an equal footing. Otherwise its evident intent and purpose, touching the matters here involved, might be rendered of no effect by the passage and enforcement of laws discriminating against citizens of other countries, under the guise of exercising the taxing power or the power to control the succession of property. If these appellants (residents and citizens of Norway who were devisees and legatees of a naturalized citizen of the United States and a resident of the state of Washington) can be discriminated against by withholding from them in the form of taxation a larger portion of the property left them than can be withheld from others under the same circumstances, then, by the same method of discrimination, their right of succession to the property may be entirely destroyed, by taking all of it; even though others may not have their privilege of succession thus impaired in the least.

"We think this treaty was intended to secure, and does secure, to the citizens of Sweden and Norway the right to succeed to property left them by will or inheritance, upon the same terms as such rights of our own citizens may be defined by law. These are the rights and the law defining them, which must have been in view in the making of the treaty, rather than possible discriminating laws affecting the rights of aliens different from citizens; for to concede the right to make and enforce such laws is to concede the right to nullify the provisions of the treaty. This construction of the terms of the treaty finds additional support when we call to our aid the general rule of liberal construction applied by the courts, both state and federal, in such cases."

## CHAPTER XIII.

### PERSONS OR FUND LIABLE FOR TAX.

- § 205. Distributee or His Share of Estate.
- § 206. Personal Liability of Distributee.
- § 207. Effect of Renunciation of Legacy.
- § 208. Effect of Tax on Personality in Another State.
- § 209. Executors or Administrators.
- § 210. Effect of Settlement of Accounts and Distribution.
- § 211. Transferees or Assignees.
- § 212. On Transfer of Stocks and Deposits.

§ 205. **Distributee or His Share of Estate.**—No reason is apparent why a testator may not direct his executors to pay the inheritance tax on any particular legacies or devises from his estate, to the end that the legatees or devisees shall be benefited to the full extent of their respective gifts.<sup>1</sup> But in the absence of

<sup>1</sup> *Kingsbury v. Bazeley*, 75 N. H. 13, 139 Am. St. Rep. 664, 20 Ann. Cas. 1355, 70 Atl. 916 (holding that a provision in a will, making bequests to various individuals, to various charitable institutions, and to individuals in trust for a charitable use, that the executors pay from the estate any and all inheritance and succession taxes upon any legacies given to individuals, has no reference to the legacy given to the individuals in trust for a charitable use); *Estate of Cummings*, 12 Pa. Co. Ct. 45.

In *Jackson v. Tailer*, 41 Misc. Rep. 36, 83 N. Y. Supp. 567, affirmed, 96 App. Div. 625, 88 N. Y. Supp. 1104, it was thought that a testamentary provision, "I do hereby further authorize and empower my said executors, in his or their discretion, to pay any or all of the aforesaid legacies within one year after my decease, without any rebate or reduction whatever," did not entitle the legatee to receive his legacy free of the transfer tax. In the course of the opinion the court used this language: "Although the executor is required to pay the tax, he pays it, not for account of the estate, and as a deduction from the legacy, but on account of the legatee upon whom the tax is imposed. In legal effect the result, as between the estate and the legatee, is precisely the same as if the legacy were to be paid over to the legatee intact, and then the legacy was to be collected from him. It is merely for the convenience of the state, and to insure certainty of collection, that the duty is cast upon the executor of paying the tax. Strictly speaking, therefore, the tax is not a rebate or reduction from the legacy.

any such direction, and in cases of intestacy, the tax must come out of each particular share or interest which is taken by the legatee, devisee, or heir, rather than out of the general property of the estate. The fact that some distributive shares may be subject to lower rates than others, while some may be entirely exempt, shows the necessity of this rule. In the case of an ordinary legacy or distributive share, the executor or administrator is required to deduct the tax therefrom, or to collect the same from the distributee, before delivering to him his share or legacy; and in case a legacy is charged upon or made payable out of real estate, the heir or devisee, before paying it, is required to deduct the tax therefrom and pay it to the executors or administrators, or they are commanded to collect the tax from the property upon which it is charged, and until the tax is so paid or collected, it remains a charge upon the real estate.\*

In determining the amount of the money in the hands of executors available for the payment of a

Doubtless, the testator may, by apt words, direct that the tax upon a particular legacy or class of legacies should be paid out of the residuary estate, but, as pointed out in *Matter of Gihon*, 169 N. Y. 443, 62 N. E. 561, such a provision would simply amount to an increase of the legacy by the amount of the tax."

\* *Estate of Stone*, 132 Iowa, 136, 10 Ann. Cas. 1033, 109 N. W. 455; *Succession of Pargoud*, 13 La. Ann. 367; *State v. Vinsonhaler*, 74 Neb. 675, 105 N. W. 472; *Estate of Thomson*, 12 Phila. 36; *Estate of Clark*, 37 Wash. 671, 80 Pac. 267; *Knowlton v. Moore*, 178 U. S. 41, 44 L. Ed. 969, 20 Sup. Ct. Rep. 747. "Theoretically such tax must come from the distributee of the estate and out of his share. It is made the duty of the administrator to protect the state against loss, and he is required to withhold it out of the share of each distributee": *Estate of Carroll*, 149 Iowa, 617, 128 N. W. 929.

"The tax is computed, not on the aggregate valuation of the whole estate of decedent considered as the unit for taxation, but on the value of the separate interest into which it is divided by the will or by the statute laws of the state, and is a charge against each share or interest according to its value, and against the person entitled thereto. The principle that the tax is a succession tax imposed as a burden on each person claiming succession, measured by the value of his interest, and

legacy, upon the petition of the legatee for distribution, the court is not "required to take into consideration the amount of the collateral inheritance tax. Such tax is not one of the expenses of administration or a charge upon the general estate of the decedent, but is in the nature of an impost tax or tax upon the right

collectible out of his interest only, was reaffirmed in the case of *In re Hoffman*, 143 N. Y. 327, 38 N. E. 311": *Estate of Westurn*, 152 N. Y. 93, 46 N. E. 315.

An inheritance tax, while not a debt of the testator, is properly chargeable to the beneficiaries: *Estate of Lotzgesell*, 62 Wash. 352, 113 Pac. 1105.

It seems but reasonable, as stated in *Goddard v. Goddard*, 9 R. I. 293, that specific legatees should severally bear the duties required in respect of their respective legacies, rather than that those duties should be paid out of the residue. Otherwise, if it should happen that the duties were in excess of the residue, the residuary legatee would lose all benefit of the testator's bounty. The law prescribes a rate of taxation varying according as the legatees are related to the testator more or less nearly within certain degrees. If the entire tax is to be paid out of the residue, then the distant relatives may suffer no more, and in fact he may suffer even less, from the tax than the testator's children or other near relatives.

It is the duty of the personal representative, before paying over any legacy or distributive share, to exact from the recipient, or to retain in his hands, out of the legacy or distributive share, a sum sufficient to pay the collateral inheritance tax. If the tax was to be paid out of the estate, it would, in many cases, operate to the injury of lineal descendants and to the children of the deceased: *Hunter v. Husted*, 45 N. C. 141.

No one can be made liable for the payment of a share of the United States succession tax due on the descent of a tract of land greater than his share in the land: *Wilhelmi v. Wade*, 65 Mo. 39.

If a succession is insolvent, and there is no inheritance nor legacies for the heirs, it is not liable for an internal revenue tax: *Johnson v. Dunbar*, 28 La. Ann. 271.

An administrator who has paid the transfer tax on real estate from personal property is subrogated, as against the heirs to whom the real estate has descended, to the claim for the same for the benefit of the creditors of the estate: *Hughes v. Golden*, 44 Misc. Rep. 128, 89 N. Y. Supp. 765.

Devisees may, as against third persons, maintain an action to recover the land, notwithstanding the inheritance tax is unpaid and the statute empowers the executor to sell the land to enforce the tax: *Weller v. Wheelock*, 155 Mich. 698, 118 N. W. 609.



of succession, and is imposed upon the several amounts of the decedent's estate to which the successors thereto are respectively entitled. The tax is computed, not on the aggregate valuation of the whole estate of the decedent considered as the unit for taxation, but on the value of the separate interests in which it is divided by the will or by the statute laws of the state, and is a charge against each share or interest according to its value and against the person entitled thereto."<sup>3</sup>

**§ 206. Personal Liability of Distributee.**—Under the United States revenue act of 1864, distributees were not liable in personam for the inheritance tax, and no action would lie against them to recover it.<sup>4</sup> Possibly this may be true of some of the present state statutes, for they provide what is, probably in most instances, a more efficient remedy, by making the executor or administrator personally liable for the tax in case he makes distribution without collecting it as the law directs. Generally, however, it is believed that the statutes of the various states are interpreted as imposing a personal liability for the tax upon the distributee himself;<sup>5</sup> and if the executors or administrators actually pay over the money of the decedent to a distributee or legatee without retaining therefrom the inheritance tax, it becomes, to the extent of the tax, money had and received by him for the use of the state, and an action of assumpsit may be maintained against such distributee or legatee therefor.<sup>6</sup>

**§ 207. Effect of Renunciation of Legacy.**—Since the inheritance tax is imposed solely upon the trans-

<sup>3</sup> Estate of Chesney, 1 Cal. App. 30, 81 Pac. 679.

<sup>4</sup> United States v. Allen, 9 Ben. 154, Fed. Cas. No. 14,430; United States v. Pennsylvania Co., 27 Fed. 539.

<sup>5</sup> Estate of Westurn, 152 N. Y. 93, 46 N. E. 315; Estate of McKennan (S. D.), 130 N. W. 33.

<sup>6</sup> Montague v. State, 54 Md. 481; Fisher v. State, 106 Md. 104, 66 Atl. 661.

fer, that is, upon the change in the title or ownership, and is collectible out of each specific share or interest, not out of the general property of the estate, then, if no transfer is effected, and no property goes to a legatee, because he renounces his legacy, there can be no tax enforced with respect to him. On his effective renunciation, the title to the gift remains in the estate, to be disposed of by the terms of the will, and the succession is taxable in accordance with the nature of the ultimate succession.<sup>†</sup>

**§ 208. Effect of Tax on Personalty in Another State.**—The supreme court of New Hampshire—after announcing the doctrine that the inheritance tax imposed upon property distributed through the courts of that state is deducted from the legacy, and is not a part of the expenses of administration, and that a testator who has made no provision for the payment of the tax from his estate must have intended the actual benefit to be received by the subject of his bounty to be as much less than the sum named in the will as he is presumed to have known that the state would take for itself in executing his expressed wish for the transmission of his property, decides that inheritance taxes paid by the executor in another state to get possession of property there for administration in New Hampshire, the state of the testator's domicile, are not a charge against the estate as expenses of administration, or deductible pro rata from the various legacies. The court makes it clear, however, that no general rule can be laid down which will solve all cases; for it is competent for the testator to provide how the tax shall be treated, and the question of his provision in that respect is one of inten-

<sup>†</sup> Estate of Stone, 132 Iowa, 136, 10 Ann. Cas. 1033, 109 N. W. 455; Estate of Wolfe, 89 App. Div. 349, 85 N. Y. Supp. 949, affirmed, 179 N. Y. 599, 72 N. E. 1152.

tion, which intention, unless clearly expressed, may not readily be inferred in view of the varying nature of the property, the character of the gift as specific or otherwise, and other evidentiary matters proper to consider.<sup>8</sup>

**§ 209. Executors or Administrators.**—For the convenience of the state, and in order to insure certainty of payment, the executor or administrator is required by most statutes to deduct the inheritance tax from legacies or distributive shares, or collect it from the legatees or distributees, before delivering to them their legacies or distributive shares in the estate; and, if he fails to do so, he himself becomes liable for the taxes thus left unpaid or uncollected. The personal representative pays the tax, not on account of the estate, but on account of the legatee or distributee, whom the government is unwilling solely to trust.<sup>9</sup>

**§ 210. Effect of Settlement of Accounts and Distribution.**—Before the final account of an executor or administrator can be said to show that the estate is in condition to be closed, it should appear therefrom that the inheritance tax has been paid.<sup>10</sup> Distribution of the estate cannot properly be made until the tax is paid. So long as the tax remains unpaid, the liability

<sup>8</sup> *Kingsbury v. Bazeley*, 75 N. H. 13, 139 Am. St. Rep. 664, 20 Ann. Cas. 1355, 70 Atl. 916.

<sup>9</sup> *McMahon v. Jones*, 14 Abb. N. C. 406; *Estate of Vanderbilt*, 2 Con. 319, 10 N. Y. Supp. 239; *Estate of Wolfe*, 66 Hun, 389, 29 Abb. N. C. 340, 21 N. Y. Supp. 515, 522; *Estate of Hackett*, 14 Misc. Rep. 282, 35 N. Y. Supp. 1051; *Jackson v. Tailer*, 41 Misc. Rep. 36, 83 N. Y. Supp. 567; *Estate of Wolfe*, 89 App. Div. 349, 85 N. Y. Supp. 949, affirmed, 179 N. Y. 599, 72 N. E. 1152; *Hunter v. Husted*, 45 N. C. 141.

An executor is not liable, as such, for a collateral tax to the state upon a devise of land to himself, though he is liable as an individual: *State v. Brevard*, 62 N. C. 141.

<sup>10</sup> *Estate of Lauder*, 6 Cal. App. 744, 93 Pac. 202; *Becker v. Nye*, 8 Cal. App. 129, 96 Pac. 333.

of the personal representative and the distributees is not affected by the action of the probate court in allowing the accounts of such representative and ordering distribution of the estate. Liability for the tax cannot be evaded, and the rights of the state to its revenue ignored, by procuring, in advance of the payment of the tax, the settlement of the final account of the executor or administrator and the distribution of the estate to the heirs, devisees, and legatees. The fact that the probate court has jurisdiction and the parties act in good faith is immaterial. The state is entitled to insist that the estate be settled according to law.<sup>11</sup>

**§ 211. Transferees or Assignees.**—The inheritance tax is not defeated by a transfer of the property, but the transferee is not liable personally beyond the amount of the property coming into his hands.<sup>12</sup> A conveyance or transfer to take effect on the death of the grantor, made with intent to evade the tax, is not invalid for that reason, nor is the tax defeated,

<sup>11</sup> *Montgomery v. Gilbertson*, 134 Iowa, 291, 10 L. R. A., N. S., 986, 111 N. W. 964; *Attorney General v. Stone*, 209 Mass. 186, 95 N. E. 395; *Attorney General v. Rafferty*, 209 Mass. 321, 95 N. E. 747; *Estate of Cumming*, 142 App. Div. 377, 127 N. Y. Supp. 109.

In the above Iowa case it is held that the turning over, without authority of the court, by executors, within a few days after their appointment, without any publication of notice of such appointment, to the father of minor legatees, who had no authority to receive them, legacies belonging to the minors, does not prevent the operation upon them of an inheritance tax under a law which had, prior to that time, been declared invalid, but which was amended so as to validate it before the distribution was approved by the court.

<sup>12</sup> *Estate of Bushnell*, 73 App. Div. 325, 77 N. Y. Supp. 4, affirmed, 172 N. Y. 649, 65 N. E. 1115.

A purchaser of land, upon which the succession tax imposed by the act of Congress of 1864 was due, incurred no personal liability; but he took title subject to the lien of the tax: *Wilhelmi v. Wade*, 65 Mo. 39.

since the fund or property is liable to taxation in the hands of the grantee, donee, or transferee.<sup>13</sup>

The succession tax is measured by the legal relation which the legatee bears to the testator, and is not affected by the relation which the assignee of legatee bears to him.<sup>14</sup>

**§ 212. On Transfer of Stocks and Deposits.**—The statutes usually guard against evasion of the inheritance tax on certain stocks, securities, and contents of safe deposit boxes, by providing that the transfer or delivery thereof shall not be made without giving notice to the fiscal officers of the state or making provision for payment of the tax; and, in case the transfer or delivery is made without complying with the law, then the persons responsible for the violation of the law are liable for the tax.

<sup>13</sup> *State Street Trust Co. v. Stevens*, 209 Mass. 373, 95 N. E. 851.

<sup>14</sup> *Estate of Cook*, 187 N. Y. 253, 79 N. E. 991.

## CHAPTER XIV.

## LIEN OF TAX.

- § 215. Statutory Provisions, in General.
- § 216. Scope and Extent of Lien.
- § 217. Priority of Liens.
- § 218. Judicial Sale or Equitable Conversion of Property.

§ 215. **Statutory Provisions, in General.**—For the better protection of the government, inheritance taxes are made a lien upon the property transferred or transmitted. The statutory provisions of the several states on this point vary considerably, as might be expected, but the recent California statute is perhaps typical. It reads thus: "Such taxes shall be and remain a lien upon the property passed or transferred until paid, and the person to whom the property passes or is transferred, and all administrators, executors, and trustees of every estate so transferred or passed, shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed; provided, that unless sued for within five years after they are due and legally demandable, such taxes shall cease to be a lien as against any bona fide purchaser of real property; and provided that no such lien shall cease within five years from the date of the passage of this act."<sup>1</sup>

§ 216. **Scope and Extent of Lien.**—The scope of the lien was recently before the supreme court of New York, when it was held that a purchaser of real property was not justified in rejecting the title solely because the transfer tax was a lien thereon. The property contracted to be sold was a part of the general estate of the testator, and was not specifically devised,

<sup>1</sup> See California statute, post. As to the lien of the tax imposed by the acts of Congress of 1864 and 1874, see *United States v. Hazard*, 8 Fed. 380; *United States v. Truck*, 27 Fed. 541.

nor was it expressly charged with the payment of any legacy. The sale was for the purpose of marshaling assets to pay debts, expenses of the estate, and distribution of legacies according to the terms of the will. "It is true," said the court, "that section 224 of the tax law provides that every such tax shall be a lien upon the property transferred until paid, and makes both the person to whom the property is transferred and the executor or administrator or trustee through whose hands it comes personally liable for its payment. The legislature could not have intended by this language to make the transfer tax a lien upon the specific property of the decedent which would come to the hands of the executor or administrator for administration. Manifestly the lien provided by this section attaches only to the fund to be distributed, or the particular property when it passes by specific bequest or devise. The legislature must have realized that it was necessary for executors and administrators to marshal the assets of their estates for the purpose of paying debts and expenses, and to obtain funds for the payment of legacies. If a lien were to attach on property as it came to their hands, it would be impressed upon personalty as well as realty, and it would be impossible for them to sell bonds or stocks or personal property free of lien, as well as to transfer any real property directed by the will to be converted into personalty. An intent thus to hamper the marshaling of the assets of the estate cannot be inferred.

"The statute is amply satisfied in view of the fact that the tax is upon the right to succession, and not upon the property of the decedent, by holding that the lien attaches upon the fund realized after the assets of the estate have been marshaled or the property is ready for distribution in kind. This interpretation is borne out by other provisions of the section, which direct an executor or administrator to deduct the tax

from the legacy or distributive share and to pay it, and permit him, where the legacy is specific, to collect the tax upon its appraised value from the legatee, and exempt him from liability to deliver any specific legacy until he shall have collected such tax thereon. Different rates of taxation are prescribed for different classes of legatees and distributees, and it would be impossible to apportion the different taxes upon the different kinds of property, and manifestly unjust to fasten a lien for all the tax upon any one piece or kind of property.

“This view is not weakened by the other provision of the section giving to the executor, administrator, or trustee full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled to sell for the payment of debts. Instances often arise where the testator directs that the general legacies be paid in securities, or that the residue of the estate be turned over in kind to the residuary legatee. In such case the lien attaches to the transfer, and, if the legatee does not advance the money to pay the tax, the executor may sell such securities as shall be necessary to do so. Our conclusion is that neither the whole nor any part of the transfer tax which the law imposed upon the various legatees under the will was a lien upon the real property contracted to be sold.”<sup>2</sup>

In another recent New York case the estate of the testator consisted in part of several farms. By his will he gave the real property to his widow for life, and the remainder to his brothers and sisters, share and share alike, with the provision that if any of them died without issue, the surviving brothers and sisters should take their shares. One of the sisters died, leaving a surviving child. It was decided that the entire property was subject to a lien for the payment of the

<sup>2</sup> *Brown v. Lawrence*, 133 App. Div. 753, 118 N. Y. Supp. 132.



whole inheritance tax, and that, if there was no money forthcoming to pay the whole tax, it was the duty of the executor to pay the same, and the court would direct the sale of so much of the whole of the property as necessary to make the payment.\*

§ 217. **Priority of Liens.**—The lien of the inheritance tax is not paramount to the lien of a mortgage on real estate which was in existence at the time of the decease of the mortgagor. The rights of the mortgagee are not impaired by subsequent devolutions of title and the creation of liens as a consequence thereof. The inheritance tax is not to be likened to the general taxes which are imposed by public authority, and which attach to the property as a whole, without regard to particular estates or interests therein. In such cases the rights of the state are always paramount. It is not concerned with the particular estates or liens that affect the property, but, dealing with it as a whole, imposes the tax, and leaves it to the parties interested in the property to secure, as between themselves, such an adjustment as the circumstances may seem to require. Different conditions surround the inheritance tax. It is imposed upon the right to succession, and is levied upon successors in respect to the shares to which they succeed. It cannot, therefore, be deemed to affect the interest of one who has a lien upon the property paramount to the ownership of the mortgagor and superior to any estate or interest which he might assume to create by will. Hence the only property or estate which becomes subject to the lien of the inheritance tax is the equity of redemption. But if the entire property is sold in proceedings to foreclose the mortgage, the liability to the estate for the unpaid tax still persists and renders the title unmarketable.†

\* Estate of Wilcox, 118 N. Y. Supp. 254.

† Kitching v. Shear, 26 Misc. Rep. 436, 57 N. Y. Supp. 464.

§ 218. **Judicial Sale or Equitable Conversion of Property.**—A few other decisions, in addition to the one mentioned in the preceding paragraph, have been made relative to the effect, on the lien of the inheritance tax, of a judicial sale of the property. In one instance it is affirmed that in case the proceeds of real estate, which has been sold by the executor, are in court, or will be paid into court, and in any event will be subject to the order of the court, the lien of the inheritance tax does not render the title of the property defective, for the court, with the entire estate under its control, can make such orders as are necessary to satisfy any claim of the state for taxes, inheritance or otherwise.<sup>5</sup>

In another instance the decedent owned an undivided one-third in real estate, and by his death a collateral inheritance tax accrued to the commonwealth by the devolution of his interest to his collateral heirs, his cotenants. After his decease they had partition of the property. The part allotted to one of them was sold, on a judgment against him, by the sheriff, and a sum realized therefrom in excess of the amount requisite to pay all of the tax upon all of the real estate. The commonwealth made no claim for the tax on the fund at distribution, and it was distributed to other liens. It was held that the partition did not have the effect of apportioning the lien of the tax, and the lien of the whole tax upon the entire estate was devested by the sheriff's sale.<sup>6</sup>

It has been adjudged in Pennsylvania that when a will converts real estate into personalty, the lien of the collateral inheritance tax is shifted to the fund which the conversion produces.<sup>7</sup>

<sup>5</sup> *Mandel v. Fidelity Trust Co.*, 128 Ky. 239, 107 S. W. 775.

<sup>6</sup> *Appeal of Mellon*, 114 Pa. 564, 8 Atl. 183.

<sup>7</sup> *Estate of Brown*, 5 Pa. Dist. Rep. 286.

## CHAPTER XV.

## RATES OF TAX.

- § 225. As Determined by Value of Property.
- § 226. As Determined by Relationship of Parties.
- § 227. In Case of Exercise of Power of Appointment.
- § 228. In Case of Assignment of Legacy.
- § 229. Law Governing in Case of Change in Statute.

§ 225. **As Determined by Value of Property.**—Attention has already been called to the general features of the progressive theory of inheritance taxation, whereby the tax rate is made to increase with the value of the property transmitted.<sup>1</sup> According to the California statute of 1905, where the property does not exceed in value twenty-five thousand dollars, certain rates are prescribed, varying with the relationship of the parties, which are called the primary rates; then upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, the rates are one and one-half times the primary rates; upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, two times the primary rates; upon all in excess of one hundred thousand dollars and up to five hundred thousand dollars, two and one-half times the primary rates; and upon all in excess of five hundred thousand dollars, three times the primary rates.

Under this statute the entire amount of a distributive share, including the exemption, is considered for the purpose of fixing the rates of taxation. And in computing the tax the amount of the exemption should not be deducted from the value of the distributive share as a whole, but should be deducted from the first twenty-five thousand dollars of value thereof to which the primary rates are applied. Thus, if the

<sup>1</sup> See sec. 26, *ante*.

value of the distributive share passing to a child is sixty-three thousand dollars, the exemption of four thousand dollars should be deducted from the first twenty-five thousand dollars thereof, and a tax imposed at the primary rate of one per cent; on the next twenty-five thousand dollars the tax should be imposed at the rate of one and one-half per cent, and on the residue of the share at the rate of two per cent.<sup>2</sup>

The primary rates, prescribed by the California statute, are to be charged in all cases, whether the property is less than or exceeds twenty-five thousand dollars in value. If the property is of greater value than twenty-five thousand dollars, the primary rates imposed on the first twenty-five thousand dollars are computed, and the higher rates upon the excess over that sum.<sup>3</sup>

The South Dakota statute provides that the higher rates shall be levied upon the entire value of the property transmitted, not merely on the excess over the amount subject to the next lower rate. This statute has recently been upheld as free from constitutional objections.<sup>4</sup>

In Minnesota the rate of taxation does not increase until the value of the inheritance, exclusive of the exemption, reaches the larger values named in the statute. The taxes must be computed in all cases upon the true value of the inheritance above an exemption of ten thousand dollars. When such valuation is less than fifty thousand dollars, the rate thereon is one and one-half per cent; when such valuation is fifty thousand dollars or over, and less than one hundred thousand dollars, the rate is three per cent; and when such valuation is one hundred thousand dollars or over, the rate is five per cent. In no event will the rate of taxa-

<sup>2</sup> Estate of Timken, 158 Cal. 51, 109 Pac. 608.

<sup>3</sup> Estate of Bull, 153 Cal. 715, 96 Pac. 366.

<sup>4</sup> Estate of McKennan (S. D.), 130 N. W. 33.

tion be increased to three per cent until the value of the right acquired by the beneficiary exceeds, exclusive of the exemption, fifty thousand dollars; and in like manner the rate cannot be increased to five per cent until such value, exclusive of the exemption, exceeds one hundred thousand dollars.<sup>5</sup>

The New York transfer tax statute of 1887 contained the proviso "that an estate which may be valued at a less sum than five hundred dollars shall not be subject to such duty or tax." It was contended that under this provision every person receiving a testamentary gift or a distributive share in an estate could claim an exemption of five hundred dollars; if his gift or share was less than five hundred dollars, the whole amount was exempt, and if his gift or share exceeded five hundred dollars, then five hundred dollars was to be deducted therefrom as an exemption. But the court of appeals reached the conclusion that when the inheritance or testamentary gift exceeded five hundred dollars, it was subject to be taxed for its full amount; but that when its value was less than that sum, no tax at all was to be collected.<sup>6</sup>

This doctrine should be considered with the New York decisions referred to in sections 133 and 134, ante. It has recently been reaffirmed by the supreme court in construing section 221 of the act of 1910, and holding that a legacy of over five hundred dollars to an adult child of the testator is taxable at one per cent on the entire amount of the legacy, not on merely the excess over and above five hundred dollars, but that a legacy to such child of less value than five hundred dollars passes exempt from taxation.<sup>7</sup>

<sup>5</sup> *State v. Probate Court*, 111 Minn. 297, 126 N. W. 1070; *State v. Probate Court*, 112 Minn. 279, 128 N. W. 18.

<sup>6</sup> *Estate of Sherwell*, 125 N. Y. 376, 26 N. E. 464.

<sup>7</sup> *Estate of Mason*, 69 Misc. Rep. 280, 126 N. Y. Supp. 998.

Where property outside of the state, belonging to a nonresident decedent, has been used by the executor in the exercise of his right of election to pay pecuniary legacies, and it has proved sufficient for that purpose, and all the property within the state passes to a residuary legatee who belongs to the class taxable at one per cent, the tax at that rate must be imposed upon the personalty passing to him.\*

Under the federal war revenue act of 1898, the amount of each particular legacy or distributive share, not the whole personal estate of a decedent, is the amount on which the progressive rate is imposed;† and this, it is believed, is the rule generally applied in construing the statutes of the various states.<sup>10</sup>

**§ 226. As Determined by Relationship of Parties.—**In the taxation of inheritances it is customary, when lineal descendants and the surviving husband or wife are taxed at all, to impose upon them a lower rate than upon strangers and collateral relatives. Therefore, the degree of relationship, or the absence of relationship, between donor and donee becomes an important matter in computing inheritance taxes. In this connection reference should be made to the preceding section. The general features of this subject, and the constitutional attacks upon them, have been considered in previous chapters.<sup>11</sup>

Where the widow and next of kin, if any, of a decedent are unknown, the presumption is that he has left next of kin but not a widow or descendants. Therefore, it is presumed that his property vested in the next of kin, and it is taxable accordingly. The

\* Estate of Whiting, 69 Misc. Rep. 526, 127 N. Y. Supp. 960, affirmed, 139 App. Div. 905, 124 N. Y. Supp. 1134.

† Knowlton v. Moore, 178 U. S. 41, 44 L. Ed. 969, 20 Sup. Ct. Rep. 747.

<sup>10</sup> See cases previously cited under this chapter; also sec. 205, ante.

<sup>11</sup> See secs. 10, 21, ante.

transfer is not "dependent upon contingencies or conditions whereby they [the interests] may be wholly or in part created, defeated, extended or abridged." <sup>12</sup>

**§ 227. In Case of Exercise of Power of Appointment.**—The relationship of the parties, which determines the rate of taxation or whether any tax at all can be assessed, in case of an exercise of a power of appointment, is the relationship existing between the donee of the power and the appointees. This necessarily follows from the rule that the donee is regarded, for purposes of inheritance taxation, as devising to the appointees property of which he is the absolute owner, and that it is his exercise of the power, not the creation of the power, which effects the taxable transfer. <sup>13</sup>

**§ 228. In Case of Assignment of Legacy.**—In the event of a legatee assigning his legacy, the inheritance tax is measured by the legal relation which the legatee bears to the testator; it is not affected by the relation which the assignee of the legatee bears to him. <sup>14</sup>

**§ 229. Law Governing in Case of Change of Statute.**—The rate of inheritance taxation, and hence the amount of the tax to be paid by those succeeding to the estate of a decedent, is determined, in the event of a change in the law, by the statute in force at the time of his death. <sup>15</sup> But the method of procedure for the determination and enforcement of the tax is governed by the statute in force at the time of the institution of the proceeding. <sup>16</sup>

<sup>12</sup> Estate of Lind, 132 App. Div. 321, 117 N. Y. Supp. 49, affirmed, 196 N. Y. 570, 90 N. E. 1161.

<sup>13</sup> See sec. 85, ante.

<sup>14</sup> See sec. 211, ante.

<sup>15</sup> Estate of Woodard, 153 Cal. 39, 94 Pac. 242.

<sup>16</sup> Estate of Davis, 149 N. Y. 539, 44 N. E. 185.

## CHAPTER XVI.

## JURISDICTION OF COURTS.

- § 235. Of Probate Courts, in General.
- § 236. In Case of Powers of Appointment.
- § 237. In Construction of Wills.
- § 238. In Determining Taxability and Value of Property.
- § 239. In Issuing Commission to Take Testimony.
- § 240. In Ordering Production of Corporate Books and Papers.
- § 241. Exclusiveness of Probate Court's Jurisdiction.
- § 242. Constitutional Objection to Nonjudicial Functions.

§ 235. **Of Probate Courts, in General.**—Proceedings in the matter of inheritance taxation are usually under the control of those courts which exercise probate jurisdiction, and that court has jurisdiction in any particular case which has jurisdiction of the administration of the estate of the decedent. In the event that two or more courts have jurisdiction, the one first acquiring jurisdiction retains it to the exclusion of every other.<sup>1</sup>

The New York court of appeals, after quoting the fifteenth section of the act of 1885 which reads, "The surrogate's court shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act," said: "Aside from the ordinary jurisdiction of the surrogate, this is a special grant of power in broad and comprehensive language; and there can be no good reason for hampering the power thus conferred by any construction that

<sup>1</sup> Dixon v. Russell, 78 N. J. L. 57, 73 Atl. 51; Estate of Wolfe, 137 N. Y. 205, 33 N. E. 156; Estate of Hathaway, 27 Misc. Rep. 474, 59 N. Y. Supp. 166; Estate of Keenan, 1 Con. 266, 5 N. Y. Supp. 200; Estate of Arnold, 114 App. Div. 244, 99 N. Y. Supp. 740.

The Connecticut statute contains no direction as to who shall compute the inheritance tax or the manner of computation; but by necessary implication the duty of computation is placed upon the court of probate: Appeal of Hopkins, 77 Conn. 644, 60 Atl. 657.



would take from him authority to decide every question that may arise in the proceedings before him which may be necessary in order fully to discharge the duties imposed upon him by the act. Every officer charged with the duty of executing a taxing power, whether it be a surrogate or a town assessor, must necessarily decide, in a judicial capacity, important questions of law, in order to perform the duties of his office."\*

It has been said that the New York transfer tax act of 1892 and the provisions of the Code of Civil Procedure for the granting of letters upon the estate of a decedent should be read together; and that what is held to be property, within the meaning of that portion of the statute providing that a tax shall be imposed upon its transfer, is also property for the purpose of conferring upon the surrogate's court jurisdiction to impose the tax. It has been decided, further, that shares of stock in a corporation of that state, held by a nonresident testator who died without the state, and taxable under the transfer tax law as "property within the state," are, within the meaning of subdivision 3 of section 2476 of the Code of Civil Procedure, "property within that county" where the corporate property is, and the surrogate's court of that county has, by force of the provisions of the transfer act, jurisdiction to impose the tax. The code section here referred to is the one which prescribes the jurisdiction of the probate court to grant letters testamentary or of administration.\*

\* Estate of Ullmann, 137 N. Y. 403, 33 N. E. 480.

\* Estate of Fitch, 160 N. Y. 87, 54 N. E. 701.

That the county court in Kentucky has no jurisdiction to impose a tax where a nonresident decedent leaves money in a domestic bank or stock in a domestic corporation, but leaves no real property in the state, see *Commonwealth v. Stump*, 146 Ky. 132, 142 S. W. 393; *Commonwealth v. Cumberland Tel. & Tel. Co.*, 146 Ky. 142, 142 S. W. 392.

According to a decision of the supreme court of New York, where the executors of a nonresident testator present their accounts, make distribution, and obtain their discharge at the court of the domicile of the decedent, jurisdiction of the surrogate of a county in New York, where personal property of the decedent was situated at the time of his death, to appoint an appraiser and fix the inheritance tax, is not lost.<sup>4</sup>

In Massachusetts the probate court having jurisdiction of the settlement of the estate of a decedent has jurisdiction, upon a petition filed by the treasurer and receiver general of the commonwealth, to determine, subject to appeal, whether an inheritance tax is payable, and if payable the amount thereof.<sup>5</sup> The probate court has jurisdiction, also, of a petition by the executor of a foreign will, proved in Massachusetts, for instructions upon the question whether he is liable for an inheritance tax on the real property of his decedent found within the state.<sup>6</sup>

**§ 236. In Case of Powers of Appointment.**—This question of jurisdiction, as dependent upon the residence of the decedent or the location of his property, has arisen in a few instances in taxing transfers under powers of appointment. As has been seen in a previous chapter, it is generally conceded that it is the exercise, not the creation, of a power of appointment which effects the transfer of the property against which the inheritance tax is enforceable. Hence the surrogate of the county in which the donee of the power resided at the time of his death, and in which his will is probated, rather than the surrogate of the county in which the creator of the power resided, has jurisdiction to determine whether the transfer is taxable. Where the

<sup>4</sup> *Estate of Hubbard*, 21 Misc. Rep. 566, 48 N. Y. Supp. 869.

<sup>5</sup> *Bradford v. Storey*, 189 Mass. 104, 75 N. E. 256.

<sup>6</sup> *Callahan v. Woodbridge*, 171 Mass. 595, 51 N. E. 176.

donee of a power, who is a nonresident of the state, exercises the power in connection with real property in the state, the surrogate court in the county where the land is situated has jurisdiction to assess the tax.<sup>7</sup>

**§ 237. In Construction of Wills.**—In inheritance tax proceedings in New York, the surrogate is clothed with authority to examine a will, pass upon the validity of its dispositions, and determine the ultimate devolution of the property. Thus where a testator attempted to create certain trusts for the disposition of the residuary estate, which trusts were ineffectual because in contravention of the rule against perpetuities, and were so conceded by all parties in interest, and the beneficiaries under the residuary clause abandoned all claim to real property embraced therein to the heirs, who sold, and out of the proceeds made provisions for the payment of the tax in case they were liable for its payment, it was decided that the surrogate had jurisdiction to determine that the residuary estate did not pass to the legatees or devisees, but to the heirs and next of kin, and that a decree assessing the heirs for that portion of the estate which passed to them was valid.<sup>8</sup> Said the court: “The surrogate must decide whether any property of a deceased person has passed to another under a will or under the laws of intestacy before he can perform a duty imposed upon him. It may sometimes happen that the property of the deceased passes in both ways. The fact that there is a will, and that it has been admitted to probate, does not necessarily determine the ownership or the transmission of the property. When the sur-

<sup>7</sup> Sec. 84, ante.

<sup>8</sup> Estate of Ullmann, 137 N. Y. 403, 33 N. E. 480. This case is cited in Estate of Peters, 69 App. Div. 465, 74 N. Y. Supp. 1028, to the effect that the court has jurisdiction to construe the testator's will in inheritance tax proceedings.

rogate looks into the will, some of its dispositions may be so clearly void as to warrant him in holding that nothing has passed by virtue of them, but that the property embraced therein has passed to heirs or next of kin under the statutes of descent or distribution. In the numerous cases that have been passed upon by this court recently, arising under this statute, we have held that the surrogate was clothed with power, and that it was his duty to decide questions arising under wills or under the statutes quite as intricate and important as that arising out of the residuary clause of the will in this case. In the settlement of the accounts of executors and the distribution of the personal estate under a will, the surrogate is empowered to determine the validity of testamentary provisions under statutes that are not more explicit or comprehensive than the one now under consideration." The statute here alluded to is this: "The surrogate's court in the county of which the decedent was a resident at the time of his death shall have jurisdiction to hear and determine all questions in relation to the facts arising under the provisions of this act."

**§ 238. In Determining Taxability and Value of Property.**—The New York transfer tax act of 1885 makes the surrogate the assessing and taxing officer, and, as such, the representative of the state for purposes relating to the appraisement and taxation of property. To adopt the language of Justice Gray: "I think it is very clear that the legislature has provided that the surrogate might proceed with the assessment of the tax without notice to any state official. . . . When we read all of the provisions of this act, it is perfectly apparent that a special system of taxation was created for the benefit of the state, with all the necessary machinery for its working; the control with respect to which was vested in the surrogate's court,

with a jurisdiction exclusive in its nature. In the assessment of a tax upon property passing by will, or by the intestate law, the responsibility is imposed by the law upon the surrogate. He acts for the state and he is commanded to assess and fix the tax to which the property is liable. To comply with the command in section 13 of the act, in that respect, he must, necessarily, determine the question of liability to taxation, inasmuch as, if no such liability exists, he is without jurisdiction in the matter. When the machinery of this system of taxation is set in motion, under section 13 of the act, whether upon the application of interested parties, or upon his own motion, the surrogate, by force of its provision, is at once invested with the office and the functions of an assessor for the state, whose duty it is to assess for its use a tax; and in whom, not only by virtue of the office, but by the further provision of section 15, inheres the authority, and upon whom rests the obligation, to determine the question of whether the property of the decedent, which passes to others, is subject or liable to taxation by the state. He must decide whether the property is taxable, for that fact lies at the foundation of his jurisdiction and is of the essence of his right to proceed with the assessment.”<sup>9</sup>

In Minnesota the probate court, when assigning an estate to trustees for the beneficial use of another, has no power to find what taxes will accrue in the future.<sup>10</sup>

**§ 239. In Issuing Commission to Take Testimony.** The New York transfer tax statute of 1896 contains the provision that surrogate courts of every county of the state “shall have jurisdiction to hear and determine all

<sup>9</sup> Estate of Wolfe, 137 N. Y. 205, 33 N. E. 156. But see the comment on this case in State v. Carpenter, 129 Wis. 180, 8 L. R. A., N. S., 788, 104 N. W. 641.

<sup>10</sup> State v. Probate Court, 112 Minn. 279, 128 N. W. 18.

questions arising under the provisions of this article, and do any act in relation thereto authorized by law to be done by a surrogate in other matters or proceedings coming within its jurisdiction." Under this statutory provision the surrogate court has power to issue a commission to take the testimony of foreign witnesses in proceedings instituted under the transfer tax law.<sup>11</sup>

**§ 240. In Ordering Production of Corporate Books and Papers.**—But the supreme court of Wisconsin has come to the conclusion that no authority to compel a private corporation, in which a decedent held stock, to produce its books and papers, is conferred upon the county court, whether acting as an appraiser or as a judicial tribunal, by a statute authorizing it to appraise decedents' estates for the purpose of fixing the inheritance tax, and for that purpose to compel the attendance of witnesses, and the taking of their testimony under oath.<sup>12</sup>

**§ 241. Exclusiveness of Probate Court's Jurisdiction.**—The Massachusetts statute of 1891, giving the probate court jurisdiction to hear and determine all questions in relation to the inheritance tax that may arise affecting any devise, legacy, or inheritance under the act, is not exclusive, and does not take away the right of a legatee to sue at common law in the superior court and there have the question determined whether his legacy is subject to the tax.<sup>13</sup>

Likewise, the Kentucky statute of 1906, in conferring power on the county court to hear and determine questions arising in relation to the inheritance tax, does not confer exclusive jurisdiction. When the jurisdiction

<sup>11</sup> *In re Wallace*, 71 App. Div. 284, 75 N. Y. Supp. 838.

<sup>12</sup> *State v. Carpenter*, 129 Wis. 180, 8 L. R. A., N. S., 788, 104 N. W. 641.

<sup>13</sup> *Town of Essex v. Brooks*, 164 Mass. 79, 41 N. E. 119.

of a court of equity is invoked to distribute an estate, and the interest of each or any number of the heirs at law is subject to the inheritance or other tax, the court, at the instance of the official representative of the commonwealth charged with the duty of collecting such tax, may require its payment out of the share or shares of those chargeable with the tax before distributing the estate or fund among them, and thereby save both the tax collector and the heirs the trouble and expense of a separate and independent proceeding in the county court to compel the payment of the tax.<sup>14</sup>

In Tennessee the primary jurisdiction of cases involving the collection of inheritance taxes is in the county court, but the court of chancery may entertain the controversy if there is no demurrer.<sup>15</sup> But the pendency in the chancery court of proceedings for the settlement of an estate does not deprive the county court of jurisdiction to collect the inheritance tax. While the statute does provide for the collection and retention of the tax in suits pending in the chancery court, it evidently is intended as an additional remedy to that which exists in the county court, and its purpose is to make certain the collection of the tax before the estate is distributed.<sup>16</sup> The county court has jurisdiction to entertain suits by the clerk thereof to collect taxes under the statute of 1909.<sup>17</sup>

Section 4 of the Illinois statute of 1895, requiring an administrator or executor to make application to the court having jurisdiction of his account in the event of questions arising as to apportionment of inheritance taxes, does not oust the county court of jurisdiction of

<sup>14</sup> *Barrett v. Continental Realty Co.*, 130 Ky. 109, 114 S. W. 750.

<sup>15</sup> *Fidelity & Deposit Co. v. Crenshaw*, 120 Tenn. 606, 110 S. W. 1017.

<sup>16</sup> *Harrison v. Johnston*, 109 Tenn. 245, 70 S. W. 414.

<sup>17</sup> *Knox v. Emerson*, 123 Tenn. 409, 131 S. W. 972.

a proceeding to collect the tax, although the estate has been certified to the circuit court for settlement.<sup>18</sup>

Under the New York statute of 1892, the supreme court, sitting as a court of equity, has no original jurisdiction to determine whether a trust fund is subject to the transfer tax. Jurisdiction is, for all purposes of fixing the amount of the tax in the first instance, conferred solely upon the surrogate and his court.<sup>19</sup>

**§ 242. Constitutional Objections to Nonjudicial Functions.**—The provisions of a statute imposing on the probate court duties not strictly judicial in the matter of fixing the value of property subject to inheritance taxation and collecting the tax are not objectionable on that account; these duties are necessarily incident to the settlement of estates, and not so foreign to the jurisdiction of the surrogate or probate judge as to render their imposition on him open to any constitutional objection.<sup>20</sup>

<sup>18</sup> *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350.

<sup>19</sup> *Weston v. Goodrich*, 86 Hun, 194, 33 N. Y. Supp. 382.

<sup>20</sup> *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101; *Estate of McPherson*, 104 N. Y. 306, 58 Am. Rep. 502, 10 N. E. 685; *Nunnemacher v. State*, 129 Wis. 190, 9 Ann. Cas. 711, 9 L. R. A., N. S., 121, 108 N. W. 627; *Beals v. State*, 139 Wis. 544, 121 N. W. 347.



## CHAPTER XVII.

## APPRAISEMENT, VALUATION, AND ASSESSMENT.

- § 250. Statement of Property and Persons Liable for Tax.
- § 251. Appraisers and Appraisement, in General.
- § 252. Venue or Jurisdiction of Proceedings.
- § 253. Law Governing in Case of Change in Statute.
- § 254. Notice of Proceedings—Due Process.
- § 255. Property to be Included in Appraisement.
- § 256. Valuation of Property, in General.
- § 257. Valuation of Notes and Doubtful or Litigated Claims.
- § 258. Valuation of Corporate Stock.
- § 259. Time of Which Valuation Determined.
- § 260. Report of Appraisers.
- § 261. Reappraisement of Property.

§ 250. **Statement of Property and Persons Liable for Tax.**—To the end that the fiscal officers of the state may be in a position to enforce the collection of inheritance taxes, some statutes require executors or administrators to file a statement or inventory showing the character and value of the estate and the names of the persons to whom it will go as distributees and who are charged with the duty of paying the tax.<sup>1</sup> The law leaves no discretion with the personal representative or the court in the matter of making the inventory; and it is the duty of the court, in any case, upon attention being called to a failure on the part of the executors or administrators to comply with the law, to see that they perform their duty. The fact that the public may have received all necessary information through the examination of witnesses will not purge of error the court's refusal to order the inventory to be made.<sup>2</sup> If an executor is ordered to have the property appraised,

<sup>1</sup> Commonwealth v. Gaulbert, 134 Ky. 157, 119 S. W. 779, holding that three months after the qualification of the executor or administrator is a reasonable time within which to file the statement.

<sup>2</sup> People v. Sholem, 244 Ill. 502, 91 N. E. 704.

he must comply with the order, notwithstanding the will may direct him to make no returns of the property.<sup>3</sup>

Personal property of a resident decedent, which has not come into the possession of the domiciliary administrator, but has been distributed through ancillary administration in the state where located, should be included in his inventory.<sup>3a</sup>

The inventory is not conclusive, but when it is claimed that any assets have been omitted, inquiry will be confined to the omitted property.<sup>4</sup>

### § 251. Appraisers and Appraisement, in General.—

The procedure to be followed in the appointment of appraisers and the determination of the value of the property, for purposes of inheritance taxation, is usually prescribed somewhat in detail by the various statutes.<sup>5</sup> The New York statute of 1892 provides that "the surrogate, upon the application of any interested party, shall, as often and whenever occasion may require, appoint a competent person as appraiser." Under this statute the court of appeals has decided that the power of a surrogate to appoint an appraiser and fix a transfer tax does not depend upon the prior ascertainment of the facts as to claims against

<sup>3</sup> Estate of Morris, 138 N. C. 259, 50 S. E. 682.

<sup>3a</sup> Appeal of Hopkins, 77 Conn. 644, 60 Atl. 657.

<sup>4</sup> People v. Sholem, 244 Ill. 502, 91 N. E. 704.

<sup>5</sup> In case of a will giving cash legacies the appointment of an appraiser was deemed unnecessary in Estate of Astor, 6 Dem. Sur. (N. Y.) 402.

Upon an application for the appointment of an appraiser under the Laws of 1887, the legatees or other beneficiaries were not necessary parties: Estate of Astor, 20 Abb. N. C. 405.

As to the interpretation of the New York statute of 1905, providing for the appointment of appraisers by the state controller, see Duell v. Glynn, 191 N. Y. 357, 84 N. E. 282.

As to the authority of a surrogate of New York county to select an appraiser after the enactment of chapter 658 of the Laws of 1900, see Estate of Sondheim, 32 Misc. Rep. 296, 66 N. Y. Supp. 726, affirmed, 69 App. Div. 5, 74 N. Y. Supp. 510.

the estate; but that the time when he shall proceed, where the interests are ascertainable and certain, is in general left to his sound discretion.\*

But the statute of 1896 seems to eliminate the words of the former law affording ground for this discretion; and under it he must act upon his own motion, when he learns of facts affording reason to believe that such proceeding ought to be instituted; and upon the application of an interested party, when a proper application is made. In either case, his duty to act appears imperative. At least this is the view taken by the supreme court in one case,<sup>7</sup> but in another case the view seems to be toward the prior doctrine, to the effect that the time when a surrogate shall appoint an appraiser and proceed is a matter of sound discretion.\*

The surrogate has authority, under the New York statutes of 1896 and 1897, to appoint an appraiser upon an application filed upon information and belief. He may supplement the petition by his own official knowledge, or act independently of it. Since he may, of his own motion, appoint an appraiser upon knowledge which he possesses, and without petition, his authority is not limited or circumscribed because a petition is presented by a competent person, with allegations upon information and belief.<sup>8</sup>

While the surrogate may, of his own motion, cause an appraisement to be made, it seems primarily to be the duty of the executors or administrators to apply therefor. It was not intended to relieve them of their obligation by authorizing the court to proceed of its own motion.<sup>10</sup>

\* *Estate of Westurn*, 152 N. Y. 93, 46 N. E. 315.

<sup>7</sup> *Kelsey v. Church*, 112 App. Div. 408, 98 N. Y. Supp. 535.

\* *Estate of Jones*, 54 Misc. Rep. 202, 105 N. Y. Supp. 932.

<sup>8</sup> *Estate of O'Donohue*, 44 App. Div. 186, 59 N. Y. Supp. 1087, 60 N. Y. Supp. 690.

<sup>10</sup> *Frazer v. People*, 6 Dem. Sur. 174, 3 N. Y. Supp. 134.

§ 252. **Venue or Jurisdiction of Proceedings.**—The appraisement, and the proceedings upon it, must be in the county where the letters testamentary or of administration are issued.<sup>11</sup> But where, by reason of the fact that the estate lies in different counties, or in a county other than the one wherein the decedent resided, two or more courts have jurisdiction to grant letters, that court which first acquires jurisdiction of the administration and inheritance tax proceedings retains jurisdiction to the exclusion of the others,<sup>12</sup> and may appoint an appraiser to appraise all of the property notwithstanding its diversity of location.<sup>13</sup> Thus in New York it has been decided that when a nonresident of the state has died, leaving property in two of its counties, the surrogate who first issues ancillary letters upon the estate acquires exclusive jurisdiction to appoint an appraiser for purposes of the inheritance tax, although there has been irregularity in the proceedings wherein the letters were obtained.<sup>14</sup>

The rule in Pennsylvania is, that the appraiser must be appointed by the register of wills in the county in which the decedent resided at the time of his death, or the county in which is located the principal part of his estate.<sup>15</sup>

§ 253. **Law Governing in Case of Change in Statute.** It is a general rule that, in the absence of words of exclusion, a statute enacted relative to the form of procedure, or the mode of attaining or defending rights, is applicable to proceedings pending or subsequently commenced. Hence while the subjects and rates of inheritance taxes, and the rights of the parties concerning the

<sup>11</sup> *Stinger v. Commonwealth*, 26 Pa. 429.

<sup>12</sup> See sec. 235, ante.

<sup>13</sup> *Estate of Keenan*, 1 Con. 266, 5 N. Y. Supp. 200.

<sup>14</sup> *Estate of Hathaway*, 27 Misc. Rep. 474, 59 N. Y. Supp. 166.

<sup>15</sup> *Estate of Dalrymple*, 215 Pa. 367, 64 Atl. 554.

same, are governed by the statute in force at the time of the death of the decedent, the method of procedure for the determination and enforcement of the tax are, in the event of a change in the law, controlled by the statute in force at the time of the institution of the proceeding.<sup>16</sup>

**§ 254. Notice of Proceedings—Due Process.**—The constitutionality of inheritance tax statutes has been challenged in a number of instances on the ground that they provide no notice or opportunity for hearing to the heirs, devisees and legatees; or, if they do make provision therefor, that it is insufficient to constitute due process of law. The consensus of judicial opinion is, that the persons liable for the tax are entitled to some kind of notice and opportunity to be heard in the proceeding to ascertain the value of the property and the amount of the tax; that to assess and collect inheritance taxes without such notice and opportunity would work a deprivation of property without due process of law. Notice of some sort is necessary, but it need not be provided for in the most exact and certain fashion practicable to devise.

An Iowa statute was assailed because it made no provision at all for notice to heirs, devisees and legatees, or for opportunity for hearing, and it was argued, in support of the statute, that as the tax was upon the succession, not on the property, its enforcement did not amount to taking property. But the court was of the opinion that while the tax was not strictly a property tax, yet its practical effect was to deprive heirs, devisees, and legatees of property which vested in them on the death of the decedent, and that it was unconstitutional in depriving them of such property without notice or opportunity for hearing.<sup>17</sup>

<sup>16</sup> Estate of Davis, 149 N. Y. 539, 44 N. E. 185.

<sup>17</sup> Ferry v. Campbell, 110 Iowa, 290, 50 L. R. A. 92, 81 N. W. 604.

In Michigan an inheritance tax statute was assailed, as taking property without due process of law, because it did not provide for a personal notice, and opportunity to resist assessment. But the court sustained the statute, and, in so doing, observed that the argument against its constitutionality lost sight of the fact that it did not take the property of the legatee, but imposed a condition upon the acquisition of property.<sup>18</sup>

The New York court has admitted that the taxpayer must have some sort of notice of the proceeding against him, and a hearing or opportunity to be heard in reference to the value of his property and the amount of the tax which may be imposed; and unless he has these, his constitutional right to due process of law is invaded. But this court has held that a statute makes sufficient provision for notice, within constitutional requirements, which provides that the surrogate "shall appoint some competent person as appraiser as often as and when occasion may require, whose duty it shall be forthwith to give such notice by mail, and to such persons as the surrogate may by order direct, of the time and place he will appraise" the property. This statute also provides that the surrogate, immediately after he has assessed the tax, shall "give notice thereof by mail to all persons known to be interested therein."<sup>19</sup>

In Montana a statute similar to the New York has been upheld as affording notice amply sufficient to accord to every person interested due process of law.<sup>20</sup>

Under the New York statutes, at least under the earlier ones, it is the duty of the appraiser to give notice by mail, of the time and place of appraisal, to such persons as the surrogate may by order direct. It is necessarily implied from this that the sur-

<sup>18</sup> *Union Trust Co. v. Durfee*, 125 Mich. 487, 84 N. W. 1101.

<sup>19</sup> *Estate of McPherson*, 104 N. Y. 306, 58 Am. Rep. 502, 10 N. E. 685.

<sup>20</sup> *State v. District Court*, 41 Mont. 357, 109 Pac. 438.

rogate will designate all persons entitled to notice; and if he omits to do so, it will be error, on account of which any tax imposed upon the person not notified or heard will be invalid as having been imposed without jurisdiction. Clearly, if any persons are entitled to notice, the heirs, devisees and legatees, who are liable for the tax, must be, and appraisement proceedings of which they have not been notified and in which they have had no opportunity to be heard are fatally defective.<sup>21</sup>

The New York court of appeals has said that the surrogate is the representative of the state for purposes relating to the appraisement and taxation of property, and that he may proceed with the assessment of the inheritance tax without notice to any state official.<sup>22</sup> But the decisions of the supreme court are to the effect that the state controller<sup>23</sup> must be given notice, and also the county treasurer<sup>24</sup> and district attorney.<sup>25</sup>

Where children are given notice that their father's estate is to be appraised, the surrogate is without jurisdiction, on their default, to impose a tax on property going to them from their grandfather's will.<sup>26</sup>

Persons who, although not actually served with notice of an appraisement, nevertheless have actual notice of it, and ample opportunity to show the real value of the estate if not satisfied with the valuation

<sup>21</sup> Estate of McPherson, 104 N. Y. 306, 58 Am. Rep. 502, 10 N. E. 685; Estate of Astor, 6 Dem. Sur. 402; Estate of Astor, 6 Dem. Sur. 413, 2 N. Y. Supp. 630; Estate of Vanderbilt, 2 Con. 319, 10 N. Y. Supp. 239; Estate of Winters, 21 Misc. Rep. 552, 48 N. Y. Supp. 1097.

<sup>22</sup> Estate of Wolfe, 137 N. Y. 205, 33 N. E. 156.

<sup>23</sup> Estate of Wolfe, 2 Con. 600, 15 N. Y. Supp. 539; Estate of Bolton, 35 Misc. Rep. 688, 72 N. Y. Supp. 430.

In Estate of Collins, 104 App. Div. 184, 93 N. Y. Supp. 342, it is held that the state controller must be given notice of an administrator's petition for an order declaring an estate exempt from the tax.

<sup>24</sup> Estate of Fulton, 30 Misc. Rep. 70, 62 N. Y. Supp. 995.

<sup>25</sup> Estate of Vanderbilt, 2 Con. 319, 10 N. Y. Supp. 239.

<sup>26</sup> Estate of Backhouse, 110 App. Div. 737, 96 N. Y. Supp. 466, affirmed, 185 N. Y. 544, 77 N. E. 1181.



fixed by the appraiser, should not be heard to complain in an action against them to collect the tax.<sup>27</sup>

**§ 255. Property to be Included in Appraisement.—**

The question as to what property is subject to inheritance taxation, and hence what should be appraised and assessed, has been considered in a previous chapter.<sup>28</sup> The deductions proper to be made on account of debts, expenses of administration, and so forth, will be discussed in the chapter to follow.<sup>29</sup> It is well understood that the tax does not attach to the very articles of which the decedent died possessed, but that it is imposed only upon what remains for distribution after the administration expenses and the rightful claims of third parties are paid or provided for. The tax is on the "net succession" to the beneficiaries.<sup>30</sup>

But the right of the state to the tax accrues at the moment of death, and is measured as to any beneficiary by the value at that time of such property as then passes to him, less the deductions referred to. Subsequent depreciation or appreciation in the value is ordinarily not considered. From these premises the supreme court of California has drawn the conclusion that property lost through the misappropriation of the executor should be included in computing and assessing the inheritance tax against residuary legatees. The court remarks that in the case of ordinary taxes on property, it would not be contended that the loss or destruction of the property after the accrual of the tax, but before its collection, would affect the liability of the taxpayer; and there is no material difference between such a case and the one under consideration.<sup>31</sup>

<sup>27</sup> *Harrison v. Johnston*, 109 Tenn. 245, 70 S. W. 414.

<sup>28</sup> See secs. 50-72, ante.

<sup>29</sup> See secs. 270-286, post.

<sup>30</sup> *Estate of Kennedy*, 157 Cal. 517, 108 Pac. 280; *Estate of Gihon*, 169 N. Y. 443, 62 N. E. 561.

<sup>31</sup> *Estate of Hite*, 159 Cal. 392, 113 Pac. 1072.



The exclusion of a worthless account in favor of the decedent, in estimating the value of the estate for purposes of the inheritance tax, is proper. It cannot be deemed property transferred or disposed of by will or the intestate laws, within the contemplation of the tax law.<sup>32</sup> The appraisement of notes and other claims in litigation will be considered hereafter.<sup>33</sup>

In discussing the sufficiency of the evidence of the existence of certain assets, the New York court has said that an estate should not be taxed except upon clear and convincing proof of the extent of property passing upon the death of the decedent or by transfers made before death and in contemplation thereof; but the court does not hold that no property can be appraised by the appraiser or assessed by the surrogate unless it can be identified.<sup>34</sup> Manifestly, the appraiser, in ascertaining what property is subject to the tax, should not rely upon briefs of counsel.<sup>35</sup>

The fact that the main portion of the personal assets of the estate of a resident decedent has been distributed through ancillary administration in another state does not excuse the domiciliary administrator from including in his inventory, for the purpose of computing the inheritance tax in the state of the domicile, the property thus distributed in a foreign jurisdiction.<sup>36</sup> Nor is he excused from filing an inventory of personal property outside of the state, because he is not liable therefor on his final account and cannot obtain possession of it.<sup>37</sup>

<sup>32</sup> Estate of Manning, 169 N. Y. 440, 62 N. E. 565. A claim of no present value should not be included in the appraisement: Estate of Rosenberg, 114 N. Y. Supp. 726.

<sup>33</sup> See sec. 257, post.

<sup>34</sup> Estate of Kennedy, 113 App. Div. 4, 99 N. Y. Supp. 72.

<sup>35</sup> Estate of Astor, 6 Dem. Sur. 413, 2 N. Y. Supp. 630.

<sup>36</sup> Appeal of Hopkins, 77 Conn. 644, 60 Atl. 657.

<sup>37</sup> Appeal of Bridgeport Trust Co., 77 Conn. 657, 60 Atl. 662.

Property which is not taxable as such may be constitutionally considered in fixing the amount of the inheritance tax."

§ 256. **Valuation of Property in General.**—In stating what value of property shall be the basis of inheritance taxes, the statutes use various expressions. Sometimes they state that the tax shall be imposed according to the "clear market value" of the property, sometimes according to the "fair market value," and sometimes at the "actual market value." Doubtless other expressions are also used, but perhaps they are all intended to convey practically the same significance, that is, what the property would sell for under ordinary or reasonably favorable circumstances, not what it might bring at a forced or involuntary sale, nor yet what it is assessed for on account of ordinary taxes, but its fair market value."

Where real estate was owned by the decedent in common with others, perhaps deduction should be made on account of permanent improvements placed on the land by his cotenants, presumably with the knowledge of all the owners, although partition has not been instituted or contribution asked; but it is otherwise as to taxes paid by strangers to the title."

§ 257. **Valuation of Notes and Doubtful or Litigated Claims.**—Promissory notes which a testator has directed his executor to cancel and surrender to the

<sup>27</sup> *Kingsbury v. Chapin*, 196 Mass. 533, 13 Ann. Cas. 738, 82 N. E. 700; *Plummer v. Coler*, 178 U. S. 115, 44 L. Ed. 998, 20 Sup. Ct. Rep. 829.

<sup>28</sup> *Walker v. People*, 192 Ill. 106, 61 N. E. 489; *Estate of McGhee*, 105 Iowa, 9, 74 N. W. 695.

When a devisee has sold the property for a certain amount, which was the best price he could obtain, the property should not be appraised at a higher figure, on the opinion of a real estate broker: *Estate of Arnold*, 114 App. Div. 244, 99 N. Y. Supp. 740.

<sup>29</sup> *Estate of Wood*, 68 Misc. Rep. 267, 123 N. Y. Supp. 574.

makers without payment should be appraised at their fair market value, not their face value.<sup>40</sup> A note on which suit has been brought by the administrators, and is still pending when appraisement is made, should be excluded from the valuation and reserved for future appraisement in case of success in collecting it.<sup>41</sup> Although the estate has been successful in a suit upon a claim, but the ultimate result is yet doubtful because there remains outstanding an accounting under an interlocutory judgment and the right of the unsuccessful party to appeal, the claim should not be considered.<sup>42</sup> So where a trust fund, alleged to constitute a part of an estate, is claimed by heirs of the decedent's husband, who intended to litigate their claim to the court of last resort, the value of such fund should be excluded in determining the value of the estate presently taxable.<sup>43</sup> It is hardly necessary to say that, in estimating the value of an estate, a worthless account in favor of the decedent is properly excluded.<sup>44</sup>

Where an administrator makes an advantageous compromise of a claim existing in favor of the estate, the inheritance tax should be imposed, not upon its face value, but upon what he received in settlement.<sup>45</sup>

Where, on the original appraisement, deductions for doubtful or uncertain claims are allowed, the report of the appraiser and the order of taxation should recite that the deduction is made without prejudice to the right of the state to a further appraisement and taxation of the whole or any part thereof, in the event of its appearing that the items deducted are not valid

<sup>40</sup> *Morgan v. Warner*, 45 App. Div. 424, 60 N. Y. Supp. 963, affirmed, 162 N. Y. 612, 57 N. E. 1118.

<sup>41</sup> *Estate of Westurn*, 152 N. Y. 93, 46 N. E. 315.

<sup>42</sup> *Estate of Skinner*, 106 App. Div. 217, 94 N. Y. Supp. 144.

<sup>43</sup> *Estate of Newcomb*, 35 Misc. Rep. 589, 72 N. Y. Supp. 58.

<sup>44</sup> *Estate of Manning*, 169 N. Y. 449, 62 N. E. 565; *Estate of Rosenberg*, 114 N. Y. Supp. 726.

<sup>45</sup> *Estate of Thomas*, 39 Misc. Rep. 223, 79 N. Y. Supp. 571.

claims or are of less value than the amount at which they were allowed in reduction of the assets of the estate.<sup>45a</sup>

**§ 258. Valuation of Corporate Stock.**—The fair market value of shares of stock in a corporation, for purposes of inheritance taxation, is not what they would bring on a forced sale if all should be placed upon the market at once, but what they would bring at a sale at or about the time of the death of the decedent, after due notice, under fair conditions, and in the ordinary course of business. In arriving at such value the appraiser and court may consider the opinions of qualified witnesses; price quotations contained in market reports and authentic publications; quotations on the public exchanges; prices established by actual sales, whether or not they are made at the exchanges; their own knowledge on the subject; and, in the absence of other competent evidence, the actual or intrinsic value of the corporate property itself.<sup>46</sup> Evidence of

<sup>45a</sup> *Estate of Rice*, 56 App. Div. 253, 61 N. Y. Supp. 911, 68 N. Y. Supp. 1147; *Estate of Porter*, 67 Misc. Rep. 19, 124 N. Y. Supp. 676.

<sup>46</sup> *Walker v. People*, 192 Ill. 106, 61 N. E. 489; *Estate of Gould*, 19 App. Div. 352, 46 N. Y. Supp. 506, 156 N. Y. 423, 51 N. E. 287; *Estate of Proctor*, 41 Misc. Rep. 79, 83 N. E. 643.

In the above *Walker* case the Illinois court uses this language: "It has been held in the state of New York, in passing upon the method adopted by an appraiser in his appraisal of large quantities of stocks and securities, that the correct rule was adopted where the appraiser based his appraisal upon public sales of securities at the stock exchange. In *Estate of Gould*, 19 App. Div. 352, 46 N. Y. Supp. 506, it was said: 'It is claimed, however, that the rule should be so construed that, when the value of large blocks of stock is involved, only the purchase and sale in markets of correspondingly large blocks of stock should be considered, upon the theory that such large blocks would necessarily sell at lower rates than small quantities of stock sold separately, and that throwing large blocks of stock upon the market all at once would have a tendency to produce a break in the market, and perhaps a total inability to get more than a mere nominal price offered for that stock. . . . Under the construction contended for, the securities involved in this pro-

sales a reasonable time after, as well as before, the time as of which the valuation is to be determined, is admissible. In the event that the stock has no market value, it is nevertheless taxable; and in that case the appraiser must ascertain the actual value of the property, taking into consideration the earning capacity of the corporation, the goodwill of the business, and, in the case of a manufacturing corporation, the value of secret receipts which it uses. The actual value of

ceeding might have been shown to be of little or no value, by considering that forcing them upon the market in large blocks at one time would break the market and make them practically unsalable at all. The rule adopted by the appraiser was the correct rule, and he apparently applied it properly in determining the value of the large amount of securities belonging to the decedent's estate."

The Illinois court then continues: "In *People v. Coleman*, 107 N. Y. 544, 14 N. E. 431, the court says: 'The market value of the shares of capital stock may sometimes be above and sometimes below the actual value. Such value may be greatly enhanced or depressed for speculative purposes, without any change in the actual value; but the market value of any stock which is listed at the stock exchange in New York and largely dealt in from day to day for a series of months will usually furnish the best measure of value for all purposes. The competition of sellers and buyers, most of them careful and vigilant to take account of everything affecting the value of stock in which they deal, and each mindful of his own interest, and seeking for some personal gain and advantage, will almost universally, if time sufficient be taken, furnish the true measure of the actual value of the stock.' The quotations of the stock exchange may be temporarily uncertain and untrustworthy, if the sales thereon are suddenly affected for speculative purposes, or by the forcing upon the market and to sale of large blocks of stock; . . . but such quotations may be a fair and safe guide where they are taken for a reasonable period of sales made in the usual and ordinary course of business."

Where the appraiser introduces in evidence three printed volumes of the commercial and financial records, in proceedings to determine the value of stocks, but the particular part of the books relied upon are not pointed out, they will not be considered on an appeal from his decision: *Estate of Havemeyer*, 32 Misc. Rep. 416, 66 N. Y. Supp. 722.

stock having no market value must be taken as the latter until the contrary is shown."<sup>47</sup>

In determining the value of shares in a joint stock association, which are not listed on the stock exchange or sold in the open market, the value of the property they represent, including the real estate, should be ascertained."<sup>48</sup>

Judicial knowledge will be taken that the value of stock in an industrial corporation often does not bear close relations to the rate of dividends which may have been paid at any given time; the rate of dividends is not a controlling gauge of values."<sup>49</sup>

#### § 259. Time of Which Valuation Determined.—

Since inheritance taxes are imposed upon the succession rather than upon the property, and the succession takes place at the time of the decedent's death, it follows that the tax is to be measured by the value of the estate as of the death of the decedent, not as of the date of the probate of the will, the distribution of the estate, or any other proceeding looking toward the administration of the estate and the collection of the tax. The appraisement is to be made and the tax fixed according to the value of the property as of the day of the decedent's death, without regard to subsequent depreciation, appreciation, or income, unless, as is the

<sup>47</sup> Estate of Brandreth, 28 Misc. Rep. 468, 59 N. Y. Supp. 1092, 169 N. Y. 437, 58 L. R. A. 148, 62 N. E. 563; Estate of Proctor, 41 Misc. Rep. 79, 83 N. Y. Supp. 643.

As to the determination of the value of inactive stocks of which sales are infrequent, see Estate of Curtice, 111 App. Div. 230, 97 N. Y. Supp. 444, affirmed, 185 N. Y. 543, 77 N. E. 1184; Estate of Cook, 50 Misc. Rep. 487, 100 N. Y. Supp. 628.

<sup>48</sup> Estate of Jones, 172 N. Y. 575, 60 L. R. A. 476, 65 N. E. 570.

<sup>49</sup> Estate of Smith, 71 App. Div. 602, 76 N. Y. Supp. 185; Estate of Curtice, 111 App. Div. 230, 97 N. Y. Supp. 444, affirmed, 185 N. Y. 543, 77 N. E. 1184.

case in Montana and perhaps some other states, the statute expressly requires the increase to be taken into consideration. This general rule has been recognized by the courts, although not clearly expressed or required by the statutes.<sup>50</sup>

**§ 260. Report of Appraiser.**—The appraiser should report any property, estate, or interest therein subject to the inheritance tax. His report should clearly express that it embraces all of the property which may be taxed at the date of the death of the decedent; and if it does not do so, it should not be confirmed.<sup>51</sup> It should also show the basis or foundation of his findings.<sup>52</sup> But it was not the duty of the appraiser, under the early New York practice, to include in his report a statement of exempt property,<sup>53</sup> nor make any deductions on account of debts and expenses of administration.<sup>54</sup> Before the surrogate has acted upon a report, he may send it back to the appraiser for the introduction of additional proof.<sup>55</sup> The report of the appraiser is simply advisory to the court whose duty it is, ultimately, to fix the value of the property and the tax to which it is liable.<sup>56</sup>

<sup>50</sup> *Hooper v. Bradford*, 178 Mass. 95, 59 N. E. 678; *State v. Probate Court*, 112 Minn. 279, 128 N. W. 18; *Estate of Hartman*, 70 N. J. Eq. 664, 62 Atl. 560; *Estate of Davis*, 149 N. Y. 539, 44 N. E. 185; *Morgan v. Cowie*, 49 App. Div. 612, 63 N. Y. Supp. 608; *Estate of Earle*, 74 App. Div. 458, 77 N. Y. Supp. 503; *Estate of Lines*, 155 Pa. 378, 26 Atl. 728.

It is said that the tax should be imposed upon the property in the form in which it stood at the time of the death of the decedent: *Estate of Offerman*, 25 App. Div. 94, 48 N. Y. Supp. 993.

<sup>51</sup> *Estate of Earle*, 74 App. Div. 458, 77 N. Y. Supp. 503.

<sup>52</sup> *Estate of Bolton*, 35 Misc. Rep. 688, 72 N. Y. Supp. 430.

<sup>53</sup> *Estate of Astor*, 6 Dem. Sur. 413, 2 N. Y. Supp. 630; *Estate of Vanderbilt*, 2 Con. 319, 10 N. Y. Supp. 239; *Estate of Wolfe*, 29 Abb. N. C. 340, 66 Hun, 389, 21 N. Y. Supp. 515, 522.

<sup>54</sup> See sec. 271, post.

<sup>55</sup> *Estate of Kelly*, 29 Misc. Rep. 169, 60 N. Y. Supp. 1005.

<sup>56</sup> *County Court v. Watson (Colo.)*, 118 Pac. 979.

§ 261. **Reappraisement of Property.**—A second appraisal is not allowable under the law of Pennsylvania; the statutes of that state seem to contemplate that the first appraisal shall be final. The remedy for an erroneous appraisal is by appeal.<sup>57</sup> But in most of the states the inheritance tax statutes contemplate a second appraisal of an estate when the first one has failed truly or sufficiently to present the property to the probate court for the assessment of the tax. Indeed, many statutes authorize the probate courts or judge, either upon his own motion or the application of any interested person, to appoint an appraiser as often as or whenever occasion may arise. Under this statutory provision a county court in Colorado has jurisdiction, on its own motion, when the report of an appraiser is insufficient to enable the court to fix the inheritance tax, to vacate the order appointing the appraiser and appoint a new one.<sup>58</sup>

In Iowa, when the state has not had notice of an appraisal, and has not been a party thereto, the district court may, on the application of the state, and a showing of error in the proceedings theretofore had, order a new appraisal to correct the error.<sup>59</sup>

When property has been submitted to a surrogate for taxation, his decree, if wrong, can ordinarily be reviewed only on appeal. His decision concludes the parties and puts the matter beyond question in other proceedings. Yet when property belonging to an estate has not come to the knowledge of an appraiser, and for that reason has been omitted from the appraisal, a further appraisal may be ordered. Such property has never been submitted to the jurisdiction of the appraiser or surrogate. It has never "had its day

<sup>57</sup> *Estate of Money Penny*, 181 Pa. 309, 37 Atl. 589.

<sup>58</sup> *County Court v. Watson* (Colo.), 118 Pac. 979.

<sup>59</sup> *Estate of McGhee*, 105 Iowa, 9, 74 N. W. 695.



in court." <sup>80</sup> Where personal property not taxed on the first appraisal because claimed by a daughter of the decedent as having been assigned to her by the deceased is subsequently adjudged, on the suit of another daughter, to be a part of the decedent's estate, the surrogate has authority to order a further appraisal. <sup>81</sup> But in Pennsylvania, where the statutes do not contemplate or provide for more than one appraisal, a second appraisal is not allowable in case the appraiser omits property not through fraud or accident, but through a mistake of law. <sup>82</sup>

The conclusiveness of appraisements and the power of the probate court to modify or vacate its decrees in the matter of appraisements and assessments will be further considered in a subsequent chapter. <sup>83</sup>

<sup>80</sup> Estate of Smith, 23 N. Y. Supp. 762; Estate of Wolfe, 137 N. Y. 205, 33 N. E. 156.

<sup>81</sup> Estate of Lansing, 31 Misc. Rep. 148, 64 N. Y. Supp. 1125.

<sup>82</sup> Estate of Moneypenny, 181 Pa. 309, 37 Atl. 589.

<sup>83</sup> See secs. 290-293, post.

## CHAPTER XVIII.

## DEDUCTIONS FROM VALUATION.

- § 270. Net Succession as Measure of Tax.
- § 271. Powers of Appraiser.
- § 272. Debts of Decedent, in General.
- § 273. Debts Secured by Mortgage on Real Estate.
- § 274. Debts Owning by Nonresident Decedents.
- § 275. Apportionment Between Exempt and Nonexempt Assets.
- § 276. Expenses of Funeral and Interment.
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- § 279. Expenses of Litigation or Will Contest.
- § 280. Compensation of Executors or Administrators.
- § 281. Compensation of Trustees.
- § 282. Commissions of Brokers.
- § 283. Property Taxes Paid by Executor.
- § 284. United States Succession Tax.
- § 285. Homestead, Exemptions, and Family Allowance.
- § 286. Property Misappropriated by Executor.

§ 270. **Net Succession as Measure of Tax.**—While the inheritance tax is said to accrue as of the time of the death of the decedent, yet it does not attach to the very articles of property of which he dies possessed, but rather upon such property as remains for distribution after the payment of debts and expenses of administration. The tax is imposed upon the legatee, devisee, or heir, and upon him only as to such property as he actually takes on distribution. The amount of the tax as to any distributee is to be determined according to the value of the “net succession,” that is, the value of such property as remains for him after the satisfaction of such charges and burdens as may lawfully be satisfied in due course of administration, for it is only such property that can truly be said to pass to him. The courts have recognized this doctrine without any express statutory declaration.<sup>1</sup>

<sup>1</sup> Estate of Kennedy, 157 Cal. 517, 108 Pac. 280; Estate of Hite, 159 Cal. 392, 113 Pac. 1072; Appeal of Gallup, 76 Conn. 617, 57 Atl.

§ 271. **Powers of Appraiser.**—Under the New York practice, as laid down by some of the decisions, the appraiser must make his report of the whole value of each legacy or distributive share, without any deduction for any purpose, or any testamentary provision; but the surrogate has authority to deduct from the appraised value the debts, funeral expenses, and administration expenses, although the statute does not in express terms confer such authority.<sup>3</sup> But in some counties the practice has always been for the appraiser to receive such evidence as might be submitted to establish claims for deduction, and his conclusions have been adopted by the court, unless objection was made thereto or they were palpably improper.<sup>3</sup> If alleged deductible debts have not been urged before the appraiser, nor reserved for future action, as they may be in a proper case, and the time for an appeal from the order fixing the tax has elapsed, the surrogate is without jurisdiction to grant relief.<sup>4</sup>

§ 272. **Debts of Decedent, in General.**—The state does not advance its claims for inheritance taxes adversely to creditors of the estate of a decedent, but holds the same in abeyance until the debts for which the estate is liable are paid. The valid debts of the estate are deducted from its value and the inheritance tax is imposed upon the residuum only, or rather upon the share of each distributee in the residuum. This, of course, is but a restatement of what has already been

699; *Morrow v. Durant*, 140 Iowa, 437, 17 Ann. Cas. 850, 23 L. R. A., N. S., 474, 118 N. W. 781; *Estate of Gihon*, 169 N. Y. 443, 62 N. E. 561; *Estate of Hutchinson*, 105 App. Div. 487, 94 N. Y. Supp. 354; *Estate of Pepper*, 159 Pa. 508, 28 Atl. 353.

<sup>3</sup> *Estate of Swift*, 137 N. Y. 77, 18 L. R. A. 709, 32 N. E. 1096; *Estate of Ludlow*, 4 Misc. Rep. 594, 25 N. Y. Supp. 989; *Estate of Millward*, 6 Misc. Rep. 425, 27 N. Y. Supp. 286.

<sup>3</sup> *Estate of Wormser*, 28 Misc. Rep. 608, 59 N. Y. Supp. 1088.

<sup>4</sup> *Estate of Morgan*, 36 Misc. Rep. 753, 74 N. Y. Supp. 478.

said in the second preceding section.<sup>6</sup> The debts allowable as a deduction are such only as could be enforced against the estate if payment were resisted.<sup>6</sup>

### § 273. Debts Secured by Mortgage on Real Estate.

In the case of debts secured by mortgage on real estate,<sup>7</sup> the question arises whether they should be deducted from the value of the personal property or from the value of the encumbered real property. The rule

<sup>6</sup> Estate of McGhee, 105 Iowa, 9, 74 N. W. 695; Succession of Levy, 115 La. 377, 5 Ann. Cas. 871, 8 L. R. A., N. S., 1180, 39 South. 37, affirmed, Cahen v. Brewster, 203 U. S. 543, 8 Ann. Cas. 215, 51 L. Ed. 310, 27 Sup. Ct. Rep. 174; Estate of King, 56 App. Div. 617, 67 N. Y. Supp. 766, affirmed, 172 N. Y. 616, 64 N. E. 1122; Estate of Havemeyer, 32 Misc. Rep. 416, 66 N. Y. Supp. 722. To the same effect, see the cases cited under the first section of this chapter.

The syllabus of a comparatively recent Louisiana case reads as follows: The deceased bequeathed to her husband all of the property of which she died possessed. That property consisted exclusively of her share of the property of the community which existed between herself and her husband. That share consists of one-half of the community property after payment of the community debts. In fixing the amount of the tax upon inheritances, the debts of the succession have to be first deducted: Succession of May, 120 La. 692, 45 South. 551.

<sup>6</sup> Estate of Wormser, 36 Misc. Rep. 434, 73 N. Y. Supp. 748. Where an action is pending against a firm of which the decedent was a member, his proportionate share of the face liability may properly be withheld from the appraisal, but the order fixing the tax should recite that determination of the matter is suspended until the litigation is ended: Estate of Wormser, 28 Misc. Rep. 608, 59 N. Y. Supp. 1088.

<sup>7</sup> In *Brown v. Kinney*, 128 Fed. 310, it is decided that where the decedent had agreed to pay mortgages on real estate as part of the purchase price thereof, for which mortgages his grantors were liable, they constituted a debt against the estate, and that the amount paid by the executor to discharge them was to be deducted from the residuary legacy in assessing the United States legacy tax.

In *McCurdy v. McCurdy*, 197 Mass. 248, 14 Ann. Cas. 859, 16 L. R. A., N. S., 329, 83 N. E. 881, where a nonresident left real property in Massachusetts subject to a mortgage, it was decided that the succession tax should be computed upon the value of the equity of redemption, that being the extent of the decedent's interest at the time of his death.

now generally prevailing is, that an heir or devisee of real estate subject to a mortgage must satisfy and discharge the encumbrance out of his own property, without resorting to the executor or administrator to have payment made from the funds or personalty of the estate. This is the law in New York, and it has there been held that a mortgage on real estate should be deducted from the value of the encumbered realty in fixing the taxable value of the realty, and that it should not be deducted from the amount of the personal estate for the purpose of ascertaining the taxable value of the personal property. Therefore, if the equity of an heir or devisee in real estate, after deducting the mortgage thereon, is less than the exemption allowed under the inheritance tax law, he is not liable to the tax.\*

This seems obviously just and reasonable. But in Michigan it has been determined, by a divided court, that a debt secured by real estate mortgage should be deducted from the personal estate in ascertaining the amount upon which the inheritance tax should be paid. The court declares that in Michigan the net personal estate for distribution consists of the personal property of the deceased after all debts and expenses have been met, including the debts secured by mortgage upon real estate, such debts being a charge upon the personal estate, as well as unsecured debts; and that the intent and purpose of the inheritance tax

\* *Estate of Livingstone*, 1 App. Div. 568, 37 N. Y. Supp. 463; *Estate of Sutton*, 3 App. Div. 208, 38 N. Y. Supp. 277; *Estate of Kene*, 8 Misc. Rep. 102, 29 N. Y. Supp. 1078; *Estate of Maresi*, 74 App. Div. 76, 77 N. Y. Supp. 76. A direction by a testator in his will to executors to pay mortgages upon real estate does not authorize the transfer tax appraiser to deduct the amount so paid from the value of the personal property in order to determine the value of the succession to the personalty: *Estate of Berry*, 23 Misc. Rep. 230, 51 N. Y. Supp. 1132. This holding hardly seems sustainable, except on the ground that the encumbered real estate was not subject to the tax, while the personal property was.

statute is to tax the personal estate subject to such deductions as should be made directly under the general statutes of distribution. The Michigan court expresses the opinion that the conclusion of the New York courts that the amount of the mortgage is not to be deducted from the personal property in determining the amount to be taxed is based, in large part at least, upon the fact that under the statutes of distribution of that state the real estate, not the personal property, is chargeable with the mortgage debt.<sup>9</sup>

**§ 274. Debts Owing by Nonresident Decedents.—**

In the case of a nonresident decedent, the New York practice has been to deduct from the New York assets all debts owing by him to New York creditors.<sup>10</sup> "The deduction to be made for debts owing to nonresident

<sup>9</sup> Estate of Fox, 159 Mich. 420, 124 N. W. 60.

<sup>10</sup> Estate of Grosvenor, 124 App. Div. 331, 108 N. Y. Supp. 926, affirmed, 193 N. Y. 652, 86 N. E. 1124. In ascertaining the amount and value of property which passes as part of the estate of a nonresident estate, and to which the transfer tax applies, all indebtedness to persons within the state may be deducted: Estate of Burden, 47 Misc. Rep. 329, 95 N. Y. Supp. 972.

In assessing stocks and bonds of domestic corporations, owned by a nonresident decedent but actually located within the state, it has been adjudged in New York that no deduction should be made for debts of the decedent due to residents of the state and secured in part by a pledge of bonds actually located in New York, and in part by a pledge of stock in foreign corporations, where the value of the pledged securities is greater than the indebtedness and the assets of the estate are five times its liabilities: Estate of Pullman, 46 App. Div. 574, 62 N. Y. Supp. 395.

It has also been decided in New York that where a decedent was a resident of Illinois and was a member of a partnership which had a branch in Chicago and another in the city of New York, and the New York branch was mainly concerned in manufacturing and incurred a large indebtedness, while the Chicago branch for the most part sold and distributed the manufactured products and thereby made collections in excess of outlays, as a result of which the debts owing to New York creditors exceeded the value of the New York assets, no transfer tax could be collected: Estate of King, 71 App. Div. 581, 76 N. Y. Supp. 220, affirmed, 172 N. Y. 616, 64 N. E. 1122.

creditors, mortuary expenses, commissions on property without the state and other administration expenses in respect to such property, should be in the proportion which the net New York estate (after all deductions are made for debts owing to resident creditors, New York commissions and New York administration expenses) bears to the entire or gross estate, wherever situated."<sup>11</sup>

Under the collateral inheritance tax law of Tennessee it has been adjudged that in case a part of the property of a nonresident decedent passes to collateral legatees, the executor should not deduct therefrom Tennessee debts owing by the decedent at the time of his death which the executor pays prior to the institution of proceedings to assess the tax, in the absence of evidence that such payment was made from Tennessee assets.<sup>12</sup>

The marshaling of assets, in the case of nonresident decedents leaving assets in the state, is further discussed in a previous section.<sup>13</sup>

**§ 275. Apportionment Between Exempt and Non-exempt Assets.**—In the event that the personal estate of a decedent consists in part of exempt government bonds, the debts, expenses of administration, and commissions should, it has been decided, be apportioned ratably between the government bonds and the other personalty, in ascertaining the taxable value of the succession.<sup>14</sup>

**§ 276. Expenses of Funeral and Interment.**—The funeral expenses of the decedent, and also reasonable sums expended for a burial lot and the erection of a

<sup>11</sup> Estate of Potter, 67 Misc. Rep. 19, 124 N. Y. Supp. 676.

<sup>12</sup> Memphis Trust Co. v. Speed, 114 Tenn. 677, 88 S. W. 321.

<sup>13</sup> See sec. 174, ante.

<sup>14</sup> Estate of Purdy, 24 Misc. Rep. 301, 53 N. Y. Supp. 735.

suitable monument, are properly deducted from the value of his estate in fixing the amount of the inheritance tax.<sup>15</sup>

§ 277. **Expenses of Administration.**—The expenses of administration are also to be deducted from the value of the decedent's estate, for the purpose of determining on what valuation the inheritance tax is to be computed; for the amount which they represent never actually passes to the heirs, devisees or legatees, and therefore is not subject to taxation.<sup>16</sup> "The tax is based, not on the gross amount of the claims made on behalf of the estate, but on the amounts actually transferred by operation of our laws to the parties interested in the estate. Every just and proper disbursement made by an executor or administrator, as a necessary or proper expense of administration, to which the executor or administrator will be entitled to be credited on his accounting with his cestui que trust, must also be credited in appraising the values of the interests transferred to the cestui que trust for purposes of taxation."<sup>17</sup>

However, the declaration in the Massachusetts statute that no estate shall be subject to the provisions of the statute unless its value, "after the payment of all debts," shall exceed the sum of ten thousand dollars, has been construed to mean that only the debts, not the expenses of administration, are to be deducted for the purpose of determining whether the estate is taxable; and yet for the purpose of ascertaining on what amount the tax is to be computed, in the event

<sup>15</sup> See sec. 61, ante.

<sup>16</sup> See sec. 270, ante; Appeal of Hopkins, 77 Conn. 644, 60 Atl. 657; Hooper v. Bradford, 178 Mass. 95, 59 N. E. 678; Estate of Dimon, 82 App. Div. 107, 81 N. Y. Supp. 428, suggesting the proper practice where disbursements made by the executor are questioned.

<sup>17</sup> Estate of Thomas, 39 Misc. Rep. 223, 79 N. Y. Supp. 571.



that the estate is taxable, the expenses of administration must be deducted.<sup>18</sup>

In determining the amount of the expenses of administration, the practice is to add to the expenses already incurred the estimated amount that will yet be expended before the estate is closed.<sup>19</sup>

**§ 278. Fees and Disbursements of Temporary Administrator.**—Where a temporary administrator is appointed in proceedings arising upon the contest of the decedent's will, his commissions and disbursements are properly deductible in determining the value of the estate for purposes of the transfer tax. The amount which they represent never reaches the legatees or next of kin, and hence they should not be taxed on account of it.<sup>20</sup>

**§ 279. Expenses of Litigation or Will Contest.**—The deduction of the expenses of litigation and of will contests, in estimating the value of estates of decedents for the purpose of the inheritance tax, has been touched upon in a previous chapter; so has the compromise of adverse claims, as affecting the tax.<sup>21</sup> The general rule is, that disbursements honestly and properly made by an executor in defending the will, or by an executor or administrator in litigating, to assert a right of the estate, or to defeat an attack upon it, or even in buying peace for the estate, should be allowed as a deduction in proceedings to fix the inheritance tax. Such disbursements are included in the necessary and proper expenses of administration, which are allowable in the accounts of the personal representative and are not subject to taxation because the amount represented by

<sup>18</sup> *Callahan v. Woodbridge*, 171 Mass. 595, 51 N. E. 176.

<sup>19</sup> *Estate of Gould*, 19 App. Div. 352, 46 N. Y. Supp. 506, 156 N. Y. 423, 51 N. E. 287.

<sup>20</sup> *Estate of Gihon*, 169 N. Y. 443, 62 N. E. 561.

<sup>21</sup> See secs. 158-161, ante.

them does not really pass to the successors of the decedent.<sup>22</sup>

The costs and expenses of an action, instituted by an executor to obtain a judicial construction of the will and instructions as to the distribution of the estate, which action was brought in good faith and has been fully justified by the results, may be deducted as a necessary expense of litigation.<sup>23</sup>

It is quite another thing, however, to deduct the expenses incurred by heirs in waging a will contest or in carrying on litigation among themselves. Hence

<sup>22</sup> *Connell v. Crosby*, 210 Ill. 380, 71 N. E. 350; *Estate of Thomas*, 39 Misc. Rep. 223, 79 N. Y. Supp. 571; *Shelton v. Campbell*, 109 Tenn. 690, 72 S. W. 112. Said the court in this last case: "We are of opinion, however, that the estate is liable for the tax only to the extent of its clear value, and that clear value means net value after the payment of all debts and expenses of administration, or execution of the will in case of testacy, and in cases where the will is contested and expenses for attorneys' fees, etc., are incurred by the executor in attempting to sustain the will, these fees and expenses must be treated as expenses of administration, and deducted from the amount of the estate in order to reap its clear value. In such case it is the duty of the executor and clerk of the county court to make an estimate of such fees and expenses, and to tentatively allow for them, and thus approximate the amount of tax to be paid; and this amount should be paid subject to revision upon final statement and settlement of accounts."

In *Estate of Marks*, 40 Misc. Rep. 507, 82 N. Y. Supp. 803, it is held that money paid a niece of the testator by proponents of his will to induce her to withdraw objections to the probate is not deductible. The court said: "The person named in the unprobated paper as executor had no authority, implied from that circumstance, to make such a contract, and the agreement was valid only because the beneficiaries under the will joined in it. The payment was, therefore, a payment out of the property transferred to the beneficiaries in satisfaction of their own contract obligation, and was not an expense of administering the estate or deductible from the appraisal."

In *Estate of Wormser*, 51 App. Div. 441, 64 N. Y. Supp. 897, the exemption from the inheritance tax of a sum as an allowance for the compromise of the claim was held erroneous, because the evidence establishing the claim and of an intention to enforce it was not sufficient.

<sup>23</sup> *Estate of Maresi*, 74 App. Div. 76, 77 N. Y. Supp. 76.

it has been affirmed that a sum expended by the next of kin in successful litigation over a will, although the court charges costs and allowances in their favor upon the estate, cannot be deducted in valuing the estate for the purpose of the inheritance tax. "It was not a claim existing against the decedent or his property. The tax imposed by the statute is upon the interest transferred by will or under the intestate law of the state. The devolution of the property and the right of the state have their origin at the same moment of time. The ascertainment of the value of the taxable interest and the fixing of the tax necessarily takes place subsequent to the death. But the guide is the value at the time of the death, when the interests were acquired. The fact that the appellants (next of kin) were put to expense in asserting their rights and were embroiled in expensive litigation to obtain them, was their misfortune. It did not diminish the value of the interests which devolved upon them on the decedent's death. It was a loss, but a loss to their general estate. It did not prevent them receiving the whole interest transmitted to them. The fact that the court charged certain costs and allowances in their favor upon the estate did not change the situation. It was practically a charge upon their own property for the benefit of their attorneys." <sup>24</sup>

Neither will the expense of litigation among distributees, including counsel fees, be deducted from the estate.<sup>25</sup> "Upon the death of the decedent, intestate, his estate passed, by operation of law, to his heirs and next of kin, subject, however, to the payment of his legal debts, reasonable funeral charges, and legitimate expenses of administration. Such charges diminished the actual value of the estate passing to those entitled.

<sup>24</sup> Estate of Westurn, 152 N. Y. 93, 46 N. E. 315.

<sup>25</sup> Estate of Lines, 155 Pa. 378, 26 Atl. 728.

Aside from such deductions, the right of the state to collect the tax in accordance with the statutory rates and provisions attaches to the total value of the estate; the rights of the state and of the distributees become fixed and established at the same instant and immediately upon the death of the intestate. If a controversy subsequently arises as to the relative rights of distributees, involving expense and litigation, the rights of the state cannot be prejudiced or impaired thereby. It is still entitled to the tax upon the full amount passing originally under the intestate laws. While such a controversy may diminish the individual distributive shares, the misfortune is that of the individual, and in that regard is the same as any other necessary expenditure in protecting one's property rights. Any other rule would permit litigating elements to consume an entire estate with costs and disbursements, entirely defeating the claim of the state."<sup>26</sup>

**§ 280. Compensation of Executors or Administrators.**—The authorities are agreed that the commission or compensation of an executor or administrator should be deducted from the estate of the decedent in determining its value for the purpose of inheritance taxation, for it is earned in administering the estate and may properly be regarded as one of the expenses of administration.<sup>27</sup> But in case a testator makes a bequest to his executors or trustees in lieu of compen-

<sup>26</sup> Estate of Sanford, 66 Misc. Rep. 395, 123 N. Y. Supp. 284.

<sup>27</sup> See sec. 270, ante; State v. Probate Court, 101 Minn. 485, 112 N. W. 878; Estate of Purdy, 24 Misc. Rep. 301, 53 N. Y. Supp. 735. It has been decided in New York that, while for the purpose of the tax, the estate must be valued as of the time of the death of the decedent, yet whether each of three executors shall receive a full commission, to be deducted from the value of the estate in assessing the tax, is to be determined by the value of the estate which they administer, so that an increase in the value between the time of

sation, the excess of this gift over and above a reasonable compensation for their services is taxable."<sup>22</sup>

§ 281. **Compensation of Trustees.**—In New York the view has been taken that the commissions of trustees under a will are to be deducted in assessing the inheritance tax. This is thought to be a necessary implication from the rule of the statute that any bequest or devise to trustees in excess of their commissions allowed by law shall be taxable.<sup>23</sup> But in Minnesota, where property of an estate is committed to a trustee for a definite period, to be by him managed and controlled for the benefit of those to whom it passes by will, the compensation of the trustee fixed by the will is not a proper item to deduct from the valuation of the estate. "The expenses of the administration of the estate of a deceased person," said the court, "are proper to be deducted in ascertaining the value of the estate for the purposes of taxation under the inheritance tax law. But the compensation of a trustee, earned, not in the administration of the estate, but in the management thereof for the benefit of the legatees or devisees, does not come properly within the class or reason for exempting administration expenses. The trustee is authorized by the will to manage and control the estate in the ordinary manner of conducting trusts, and, if deemed prudent within his opinion,

the death and the date of the issuance of letters is to be considered: *Estate of Van Pelt*, 63 Misc. Rep. 616, 118 N. Y. Supp. 655.

When no proof is made, upon the appraisal of assets in the state owned by a nonresident decedent, as to the rate of executors' commissions in the foreign state, the appraiser should make a deduction, based upon the relative amount of property in this state, at the rate of commissions allowed in this state: *Estate of Kennedy*, 20 Misc. Rep. 531, 46 N. Y. Supp. 906.

<sup>22</sup> See sec. 163, ante.

<sup>23</sup> *Estate of Gihon*, 169 N. Y. 443, 62 N. E. 561; *Estate of Silliman*, 79 App. Div. 98, 80 N. Y. Supp. 336; *Estate of Shields*, 68 Misc. Rep. 264, 124 N. Y. Supp. 1003.

to continue the business theretofore carried on by the testator. Services rendered in that behalf have no reference to closing the estate for the purpose of distribution thereof to those entitled to it and are not required or essential to the perfection of the rights of the heirs or legatees. The expenses of administration are imposed as a matter of law, and are caused by the use of the legal machinery provided by the state to wind up the affairs of deceased persons, and cannot ordinarily be avoided; hence it is just that they should be deducted from the valuation of the estate. Trusts, however, of the character of that here before the court, are created for the benefit of those to whom the property ultimately passes, are of voluntary creation, and intended for the preservation of the estate. No sound reason is given to support the contention that such expenses should be taken into consideration in fixing the value of the estate for the purpose of this tax." <sup>20</sup>

**§ 282. Commissions of Brokers.**—In the event that a sale of property of a decedent is necessary and an act of administration, the commissions of a broker for finding a purchaser may be regarded as a proper expense of administration and deducted from the estate in determining its taxable value. In the cases where this has been held to be the law, the will gave the executors a power of sale.<sup>21</sup>

**§ 283. Property Taxes Paid by Executor.**—Taxes on the real estate of a decedent, which were due and payable at the time of his death and have been paid by his executor, should be deducted in fixing the value of his estate for purposes of inheritance taxation.<sup>22</sup>

<sup>20</sup> *State v. Probate Court*, 101 Minn. 485, 112 N. W. 878.

<sup>21</sup> *Estate of Rothschild*, 63 Misc. Rep. 615, 118 N. Y. Supp. 654; *Estate of Shields*, 68 Misc. Rep. 264, 124 N. Y. Supp. 1003.

<sup>22</sup> *Estate of Liss*, 39 Misc. Rep. 123, 78 N. Y. Supp. 969.

If, at the time of the death, the assessment is complete and has passed the stage when any change therein can be made, the tax would seem a debt proper for the personal representative to pay in course of administration and proper to deduct in valuing the estate for the inheritance tax; but a general assessment, which has not been advanced to that stage of finality at the time of the decease, is not a debt to be so deducted. "Taxation cannot create a debt until there is a tax fixed in amount and perfected in all respects. It is not enough to lay the foundation, but the structure must be built." <sup>33</sup>

§ 284. **United States Succession Tax.**—The Massachusetts practice has been to deduct the legacy tax, paid to the United States under the revenue act of 1898, from the estate of a decedent in appraising it for the state succession tax. This seems to be a reasonable procedure and has been approved on at least one occasion in New York.<sup>34</sup> There can be no doubt, however, that a state may decline to make such deduction, and the New York courts generally have so declined.<sup>35</sup>

§ 285. **Homestead, Exemptions, and Family Allowance.**—Money paid by order of the probate court as

<sup>33</sup> Estate of Maresi, 74 App. Div. 76, 77 N. Y. Supp. 76; Estate of Hoffman, 42 Misc. Rep. 90, 85 N. Y. Supp. 1082; Estate of Freund, 143 App. Div. 335, 128 N. Y. Supp. 48, affirmed, 202 N. Y. 556, 95 N. E. 1129.

According to Estate of Brundage, 31 App. Div. 348, 52 N. Y. Supp. 362, a deduction should be made of taxes levied after the death of the decedent, under an assessment made against him before his decease, and paid by the executor from the estate.

<sup>34</sup> Hooper v. Shaw, 176 Mass. 190, 57 N. E. 361; Estate of Gihon, 33 Misc. Rep. 206, 68 N. Y. Supp. 381, 64 App. Div. 504, 72 N. Y. Supp. 1104, 169 N. Y. 443, 62 N. E. 561.

<sup>35</sup> Estate of Becker, 26 Misc. Rep. 633, 57 N. Y. Supp. 940; Estate of Irish, 28 Misc. Rep. 647, 60 N. Y. Supp. 30; Estate of Curtis, 31

an allowance to the family of the decedent, property exempt to them under the law, and the homestead set apart for their use, do not pass by will or by the intestate laws, and should be deducted from the estate in estimating its value for the purpose of assessing the inheritance tax. This question has been considered in a previous chapter.<sup>26</sup>

**§ 286. Property Misappropriated by Executor.—**

The supreme court of California has ruled that since the right of the state to the inheritance tax accrues at the moment of death, and is measured as to any beneficiary by the value at that time of such property as actually passes to him, the loss or destruction of a part of the property before actual delivery of possession to him cannot affect the amount of the tax, any more than would a material depreciation in value. Therefore, where the executor misappropriates a portion of the estate, the value of the property so lost should be included in computing the tax.<sup>27</sup>

Misc. Rep. 83, 64 N. Y. Supp. 574; *Estate of Vanderbilt*, 71 App. Div. 611, 75 N. Y. Supp. 969, 172 N. Y. 69, 64 N. E. 782.

<sup>26</sup> See secs. 59, 60, ante.

<sup>27</sup> *Estate of Hite*, 159 Cal. 392, 113 Pac. 1072.



## CHAPTER XIX.

## VACATION AND MODIFICATION OF ORDERS OR DECREES.

§ 290. Conclusiveness of Orders and Decrees.

§ 291. Vacation or Setting Aside of Orders and Decrees.

§ 292. Modification of Orders and Decrees.

§ 293. Correction of Valuation of Property.

§ 290. **Conclusiveness of Orders and Decrees.**—Where the statutes confer jurisdiction on a court to hear and determine all questions in relation to inheritance taxes, the orders or judgments of that court in the matter of appraising the estate and assessing the tax, whether it is a probate court or a court of general jurisdiction, have that quality of finality and conclusiveness possessed by other judgments or orders, and, unless appealed from or attacked on motion within the time prescribed by law, they cannot be questioned, except for reasons which will warrant intervention by a court of equity, by the parties in subsequent proceedings for the collection of the tax assessed.<sup>1</sup>

“The appraisement proceeding,” to adopt the language of a New York judge, “furnishes an opportunity to the parties interested in the estate, on the one

<sup>1</sup> *Becker v. Nye*, 8 Cal. App. 129, 96 Pac. 333; *Port Huron v. Wright*, 150 Mich. 279, 114 N. W. 76; *Estate of Wolfe*, 137 N. Y. 205, 33 N. E. 156; *Estate of Lawrence*, 96 App. Div. 29, 88 N. Y. Supp. 1028; *Estate of Moneypenny*, 181 Pa. 309, 37 Atl. 589. To the same effect, see *Estate of Miller*, 110 N. Y. 216, 18 N. E. 139; *Estate of Hackett*, 14 Misc. Rep. 282, 35 N. Y. Supp. 1051; *Estate of Lawrence*, 96 App. Div. 29, 88 N. Y. Supp. 1028.

The establishment by a court of the inheritance tax payable from an estate is an adjudication upon that subject which binds the state as well as the estate as to all questions passed upon: *Estate of Gordon*, 2 Cal. Pro. 138.

The fact that the surrogate, upon the basis of the executor's affidavit, orally expresses the opinion that an estate is too small to be taxable, does not preclude subsequent proceedings to assess a tax,

hand, and the state on the other, to inquire fully as to the value of the property at the time of the decedent's death, and to obtain and present such testimony as may aid in the ascertainment of such value. Upon the proofs thus taken the appraiser makes his report and the surrogate enters an order assessing and fixing the tax. This order is an adjudication in respect to the liabilities thereby fixed, and unless an appeal is taken therefrom is conclusive on all parties thereto."<sup>2</sup> Such judicial determination, though of a court of limited jurisdiction, "may be treated no more lightly than the solemn determinations of courts of record, and for fraud, newly discovered evidence, and the like, should be set aside and new hearings granted only under circumstances similar to those that are held sufficient to warrant the granting of a new trial in courts of record."<sup>3</sup>

The law has been found otherwise in New Jersey. There the act of the surrogate in assessing a legacy tax is not a judgment which will conclude the legatee from contesting his liability for the tax, when called upon to show cause before the orphans' court why the tax should not be decreed to be paid, and this notwith-

if no decree was entered exempting or taxing the estate: *Estate of Schmidt*, 39 Misc. Rep. 77, 78 N. Y. Supp. 879.

According to *Stinger v. Commonwealth*, 26 Pa. 429, the appraisalment of the estate of a decedent, directed by the register, under the collateral inheritance laws, unappealed from, is conclusive only as to the value of the estate, but not of liability to taxation.

According to *Estate of Davis*, 91 Hun, 53, 36 N. Y. Supp. 822, a surrogate may himself determine the value of an estate, or he may do this by the aid of an appraiser; when he adopts the latter method and applies to the superintendent of insurance to have him determine the value of a future estate, the determination of the superintendent is final. Either method is complete in itself; and when one is adopted, it precludes any resort to the other.

<sup>2</sup> *Estate of Rice*, 56 App. Div. 253, 29 Misc. Rep. 404, 61 N. Y. Supp. 911, 68 N. Y. Supp. 1147.

<sup>3</sup> *Estate of Barnum*, 129 App. Div. 418, 114 N. Y. Supp. 33.

standing he has failed to appeal from the assessment of the surrogate within the time limited by law.<sup>4</sup>

§ 291. **Vacation or Setting Aside of Orders and Decrees.**—Undoubtedly the orders and decrees of the court in proceedings to appraise the estate of a decedent and assess the inheritance tax may, in common with the judicial determinations of courts in other proceedings, be vacated or set aside, in a proper case, for fraud, accident, mistake, newly discovered evidence, and the like. They are not less vulnerable to attack on these grounds than are orders and decrees in other judicial proceedings.<sup>5</sup> In New York the surrogate has authority to vacate an order attesting and fixing the tax, and remit the matter to the appraiser for rehearing and reappraisement; but this power, it has been said, can be exercised only as the same power could be by a court of record. If its exercise involves discretion, the circumstances under which the determination is made may be reviewed to ascertain whether there has been an abuse of discretion.<sup>6</sup>

Where the surrogate inadvertently confirms an appraiser's report which is defective in not showing whether all property subject to the tax is embraced

<sup>4</sup> *Estate of Landis*, 66 N. J. Eq. 291, 56 Atl. 1039.

<sup>5</sup> *Estate of Bruce*, 59 N. Y. 1083; *Estate of Scrimgeour*, 175 N. Y. 507, 67 N. E. 1089; *Estate of Backhouse*, 110 App. Div. 737, 96 N. Y. Supp. 466, affirmed, 185 N. Y. 544, 77 N. E. 1181.

<sup>6</sup> *Estate of Barnum*, 129 App. Div. 418, 114 N. Y. Supp. 33. Usually an order setting aside a determination on the ground of newly discovered evidence should not contain an adjudication contrary to the former determination, but should provide for a new hearing upon which both parties may be heard. This rule, however, does not make it improper for a surrogate, when incontrovertible evidence, discovered since the entry of an order imposing the tax, is presented to him, showing that the estate is not subject to taxation, to vacate the order, and make it necessary for him to remit the matter to the appraiser to make the computation upon which the taxability or nontaxability of the property depends, especially as the statute authorizes him to determine the amount of the tax without

therein, he has power to vacate his order of confirmation and send the report back to the appraiser for confirmation.' And when it is contended that certain interests have been taxed at a rate lower than the statute provides, the surrogate has power, on an order to show cause, to set aside the order assessing the tax and direct a reappraisal.\* He may vacate a void order after the time for appeal has passed.<sup>9</sup>

There appears to be a great deal of uncertainty in New York as to the power of a surrogate to open his order or decree fixing the value of an estate and the tax thereon, in order that it may be shown that the appraisement is too high or too low. This question will be further considered in the following section. Probably the better rule is, that a reappraisement will not be ordered merely because subsequent events indicate that the first appraisement placed a valuation above or below the actual or market value of the property, although there is at least one decision that lends itself to a contrary interpretation.<sup>10</sup>

It has been decided that the surrogate cannot, six years after the entry of an order confirming an appraiser's report, direct an appraisement of personal property which was in the hands of the executors at

appointing an appraiser: *Estate of Cameron*, 97 App. Div. 436, 89 N. Y. Supp. 977, affirmed, 181 N. Y. 560, 74 N. E. 1115.

Before the surrogate has acted upon the report of the appraiser, it is within his discretion to remit it to the appraiser for the introduction of additional evidence: *Estate of Kelly*, 29 Misc. Rep. 169, 60 N. Y. Supp. 1005.

<sup>7</sup> *Estate of Earle*, 74 App. Div. 458, 77 N. Y. Supp. 503. But where the statute does not require the administrator to aid the appraiser and make disclosure as to the assets of the estate, the fact that he does not make such disclosure is not ground for setting aside an appraisement: *Estate of Smith*, 14 Misc. Rep. 169, 35 N. Y. Supp. 701.

<sup>8</sup> *Estate of Eaton*, 55 Misc. Rep. 472, 106 N. Y. Supp. 682.

<sup>9</sup> *Estate of Scrimgeour*, 80 App. Div. 388, 80 N. Y. Supp. 636, affirmed, 175 N. Y. 507, 67 N. E. 1089; *Estate of Coogan*, 27 Misc. Rep. 563, 59 N. Y. Supp. 111.

<sup>10</sup> *Estate of Fulton*, 30 Misc. Rep. 70, 62 N. Y. Supp. 995.

the time of the first appraisalment, which property was brought to the attention of the appraiser and was by him held not subject to taxation.<sup>11</sup> It has also been held that a surrogate is without authority to open a decree assessing a tax, for errors of law in treating the interest of the decedent in firm real estate as personalty, and in failing to make a deduction for mortgages existing upon firm personal property.<sup>12</sup> It has been decided, too, that the controller cannot procure a new appraisal where it has been erroneously decreed as a matter of law that a bequest to the executor for his services to the testatrix is exempt from taxation.<sup>13</sup>

**§ 292. Modification of Orders or Decrees.**—If property, through collusion, concealment, or inadvertence, has escaped assessment, the surrogate court is not without power to reach it; and if facts come to light after the tax has been assessed, showing that the court has exceeded its jurisdiction, imposed a tax on a succession that did not take place, or has otherwise been led into error calling for a modification of its orders or decrees, the court has authority to grant relief.<sup>14</sup> The surrogate is clothed with authority to modify his decree erroneously imposing a tax.<sup>15</sup> He may modify his order holding that a transfer or succession occurred which in fact did not.<sup>16</sup> He may modify his decree so as to allow an exemption,<sup>17</sup> or to deduct a debt of the estate that has been overlooked,<sup>18</sup> or deduct

<sup>11</sup> *Estate of Crerar*, 56 App. Div. 479, 67 N. Y. Supp. 795.

<sup>12</sup> *Estate of Wallace*, 28 Misc. Rep. 603, 59 N. Y. Supp. 1084.

<sup>13</sup> *Estate of Niven*, 29 Misc. Rep. 550, 61 N. Y. Supp. 956.

<sup>14</sup> *Morgan v. Cowie*, 49 App. Div. 612, 63 N. Y. Supp. 608; *Estate of Scrimgeour*, 175 N. Y. 507, 67 N. E. 1089.

<sup>15</sup> *Estate of Backhouse*, 110 App. Div. 737, 96 N. Y. Supp. 466, affirmed, 185 N. Y. 544, 77 N. E. 1181.

<sup>16</sup> *Estate of Warren*, 62 Misc. Rep. 444, 116 N. Y. Supp. 1034.

<sup>17</sup> *Estate of Daly*, 34 Misc. Rep. 148, 69 N. Y. Supp. 494.

<sup>18</sup> *Estate of Campbell*, 50 Misc. Rep. 485, 100 N. Y. Supp. 637.

executors' commissions as trustees,<sup>19</sup> or to correct an error in including in the appraisement property erroneously supposed to have passed to a son of the decedent.<sup>20</sup>

§ 293. **Correction of Valuation of Property.**—The jurisdiction of a surrogate to vacate his decree fixing the value of an estate has been touched upon in a previous section.<sup>21</sup> The law contemplates such an estimate of the value of the property and of such deductions to be made as are practicable in the light of the information obtainable, and an appraisement should not ordinarily be disturbed merely because it subsequently proves inaccurate. Of necessity, it must be inaccurate in a greater or less degree. Assets may produce more or less than the sum at which they were appraised; and the deductions allowed may vary somewhat from what should have been permitted. But the estimate which is fairly and honestly made must furnish the basis for the imposition of the tax; "and it has been held that the surrogate cannot modify his determination because he had not estimated the value of the property at the amount it ultimately produces to the estate, nor because he has not estimated the claims against the estate at the amount which it is ultimately discovered they will reach, nor for error in treating real property as personalty, nor for failure to deduct from the value of personal estate the amount of mortgages thereon."<sup>22</sup>

<sup>19</sup> *Estate of Silliman*, 79 App. Div. 98, 80 N. Y. Supp. 336, affirmed, 175 N. Y. 513, 67 N. E. 1090.

<sup>20</sup> *Estate of Willet*, 51 Misc. Rep. 176, 100 N. Y. Supp. 850, affirmed, 119 App. Div. 119, 104 N. Y. Supp. 1150.

<sup>21</sup> See sec. 334, ante.

<sup>22</sup> *Estate of Connelly*, 38 Misc. Rep. 466, 77 N. Y. Supp. 1032. Without evidence that on a rehearing a greater valuation will be shown, the state will not be granted a rehearing to review an appraisement alleged to be too low: *Estate of Johnson*, 37 Misc. Rep. 542, 75 N. Y. Supp. 1046.

In accordance with this doctrine, it has been decided that a surrogate has no power to modify his determination of the value of an estate in order to allow the executor the amount of a judgment subsequently recovered against the estate by suit after his rejection of the claim, and another claim presented against the estate after the appraisement, and also certain expenses of administration.<sup>22</sup> It has also been held that a reappraisement will not be ordered merely because the property, after the order fixing the tax, sells at public auction for an amount exceeding the appraisement, no fraud, concealment, or mistake being alleged;<sup>23</sup> and that where property, some months after the appraisement, sold for only a little more than half of the amount for which it was appraised, does not warrant the surrogate in modifying his decree by reducing the valuation to the sum realized on the auction sale.<sup>24</sup> In so deciding the court refers to the statement of Justice Spring<sup>25</sup> that "if facts have arisen since the imposition and payment of the tax showing it was improperly assessed or excessive in amount, or without the jurisdiction of the court to tax, then the court possesses the power to redress the wrong done"; and declares<sup>26</sup> that if this statement involves the conclusion that the power of the surrogate is broad

<sup>22</sup> Estate of Connelly, 38 Misc. Rep. 466, 77 N. Y. Supp. 1032.

<sup>23</sup> Estate of Bruce, 59 N. Y. Supp. 1083.

<sup>24</sup> Estate of Lowry, 89 App. Div. 226, 85 N. Y. Supp. 924.

<sup>25</sup> This statement is made in *Morgan v. Cowie*, 49 App. Div. 612, 63 N. Y. Supp. 608.

<sup>26</sup> Estate of Lowry, 89 App. Div. 226, 85 N. Y. Supp. 924. In this case it was sought to have the surrogate's order fixing the value of the estate modified because a sale of the estate a few months later indicated that it was appraised too high. The court said: "The valuation now alleged to have been erroneous was fixed upon all the evidence which the parties chose to lay before the court at the time, and so far as appears upon all the evidence which then existed. A practice which would permit judgments fixing values to be opened from time to time in cases where a subsequent sale of the appraised property tended to show that the figure fixed by the judgment was

enough to permit him to alter his valuation upon the reception of proof as to subsequently arising facts indicating that it was too high or too low, the correctness of the proposition is doubtful.

too large or too small, would lead to intolerable uncertainty and confusion. In the administration of justice, all that can ordinarily or reasonably be expected or demanded by litigants in the determination of their controversies is that these shall be correctly decided upon the facts relevant to the issues which have occurred before the trial and those which exist at the time when the trial takes place. They cannot be insured against the possibility of future happenings which may indicate that the decision was in some respects incorrect. In expressing the opinion, however, that a judgment on an issue of value should not be disturbed by the court which rendered it on account of subsequently arising evidence tending to show that the valuation adopted was erroneous, it was not necessary to hold that there can be no case in which a court might modify its decree because of an error of fact arising upon the trial or hearing. Such power would probably exist, for example, where the property appraised, which all parties assumed to have belonged to the decedent, really included a lot which he never owned; and in other cases in error not relating to any issue actually litigated."



## CHAPTER XX.

## APPEALS.

§ 300. Persons Entitled to Appeal.

§ 301. Time for Appeal.

§ 302. Notice of Appeal.

§ 303. Bonds or Undertakings.

§ 304. Other Appellate Proceedings.

§ 300. **Persons Entitled to Appeal.**—The executor, as such, is entitled to appeal from an order and decree fixing an inheritance tax; he is made liable for the tax, and is a party aggrieved within the meaning of the statute relating to appeals.<sup>1</sup> And the state, as an interested party, has such right of appeal.<sup>2</sup> In New York the state controller is entitled to appeal from the order of a surrogate determining that part of an estate is not subject to the transfer tax,<sup>3</sup> or reversing an order assessing a transfer tax.<sup>4</sup> In Ohio, where the probate court determines the liability of a devise, legacy or inheritance for the tax, an appeal may be taken by either party to the controversy from

<sup>1</sup> Estate of Cornell, 66 App. Div. 162, 73 N. Y. Supp. 32, order modified, 170 N. Y. 423, 63 N. E. 445. According to Commonwealth v. Coleman, 52 Pa. 468, administrators may appeal from the valuation on the personal estate but have nothing to do with the real estate; the heirs are the only persons who have a right to appeal from the valuation of the real estate.

<sup>2</sup> Becker v. Nye, 8 Cal. App. 129, 96 Pac. 333; People v. Sholem, 238 Ill. 203, 87 N. E. 390; Estate of Blackstone, 69 App. Div. 127, 74 N. Y. Supp. 508.

The voluntary payment of the tax by a legatee, in compliance with the decree of the orphans' court fixing the amount thereof, will not bar the right of the commonwealth afterward to appeal from the decree for error in not requiring payment of the six per cent charge in addition: Appeal of Commonwealth, 128 Pa. 603, 18 Atl. 386.

<sup>3</sup> Estate of Dingman, 66 App. Div. 228, 72 N. Y. Supp. 694.

<sup>4</sup> Estate of Hull, 109 App. Div. 248, 95 N. Y. Supp. 819.

the judgment of the probate court to the court of common pleas.<sup>5</sup>

**§ 301. Time for Appeal.**—The time within which an appeal may be taken from an order or decree in inheritance tax proceedings varies in the different states. In Pennsylvania an appraisement and assessment becomes final and conclusive upon all parties if not appealed from within thirty days.<sup>6</sup> In New York, where the state controller was not a party to proceedings in which it was determined that part of the estate was not subject to the transfer tax, he has three months in which to appeal from the surrogate's order.<sup>7</sup> Under the New York statute which forbids any court or judge from extending the time fixed by law within which an appeal may be taken, neither the appellate division nor the surrogate's court can extend the time prescribed by the transfer tax statute for appealing from an assessment.<sup>8</sup>

**§ 302. Notice of Appeal.**—A statute which gives a right of appeal in inheritance tax proceedings necessarily implies notice.<sup>9</sup> Under the New York statutes the notice must state the grounds upon which the appeal is taken, and no questions, other than those specified in the notice, can be considered by the appellate tribunal.<sup>10</sup> This rule, however, is not inflexible.

<sup>5</sup> *Humphreys v. State*, 70 Ohio St. 67, 101 Am. St. Rep. 838, 1 Ann. Cas. 233, 65 L. R. A. 776, 70 N. E. 957.

<sup>6</sup> *Commonwealth v. Freedley*, 21 Pa. 33.

<sup>7</sup> *Estate of Dingman*, 66 App. Div. 228, 72 N. Y. Supp. 694.

<sup>8</sup> *Estate of Seymour*, 144 App. Div. 151, 128 N. Y. Supp. 775.

<sup>9</sup> *Estate of Beecher*, 211 Pa. 615, 61 Atl. 252, holding that the thirty days' limitation of the right of appeal begins only from such notice.

<sup>10</sup> *Estate of Davis*, 149 N. Y. 539, 44 N. E. 185; *Estate of Manning*, 169 N. Y. 449, 62 N. E. 565; *Miller v. Tracy*, 93 App. Div. 27, 86 N. Y. Supp. 1024; *Estate of Stone*, 56 Misc. Rep. 247, 107 N. Y. Supp. 385. The propriety of the appraiser's action in deducting the amount of a claim cannot be reviewed by the surrogate on an

On an appeal to a surrogate from the confirmation of an appraiser's report and from an assessment of the tax in conformity therewith, the appellants should be permitted to file additional allegations that since the appraisal litigation has been commenced to determine who are the heirs and next of kin of the decedent, thus creating a controversy which affects the title of the whole estate, although the sixty days allowed for an appeal have expired and the grounds specified in the notice of appeal do not include the matter of these allegations, it appearing that the litigation was not begun until the expiration of the time limited for an appeal. The surrogate should either postpone the appraisement until the litigation is determined, or at least receive and consider the proofs of the allegations.<sup>11</sup> Where the state, or the prosecuting attorney in its behalf, takes the appeal, it may be done without filing the written notice of an intention to appeal provided by the Ohio statute.<sup>12</sup>

**§ 303. Bonds or Undertaking.**—When an appeal is taken by the state, or by an officer in its behalf, it is not required to give a bond or an undertaking. This has been decided in Illinois and Ohio.<sup>13</sup>

**§ 304. Other Appellate Proceedings.**—It has been said that inheritance tax proceedings, while special, are at law, and are not equitable in character; and that the rules applicable to appeals in law cases must

appeal from the appraiser's determination, where the item is not specified in the notice of appeal: *Estate of Wormser*, 51 App. Div. 441, 64 N. Y. Supp. 897.

<sup>11</sup> *Estate of Westurn*, 152 N. Y. 93, 46 N. E. 315.

<sup>12</sup> *Humphreys v. State*, 70 Ohio St. 67, 101 Am. St. Rep. 888, 1 Ann. Cas. 233, 65 L. R. A. 776, 70 N. E. 957.

<sup>13</sup> *People v. Sholem*, 238 Ill. 203, 87 N. E. 390; *Humphreys v. State*, 70 Ohio St. 67, 101 Am. St. Rep. 888, 1 Ann. Cas. 233, 65 L. R. A. 776, 70 N. E. 957.

govern.<sup>14</sup> Questions not raised below will ordinarily not be considered in the appellate tribunal.<sup>15</sup> A finding that an amount deducted for the erection of a tomb was reasonable will not be reviewed, if the record does not show how much was reserved for that purpose.<sup>16</sup> But in any case where the court can see that a ruling in rejecting evidence may have been prejudicial to the appellant, it should not insist that an exception is indispensable to a review of the errors committed in its rejection.<sup>17</sup>

On the decision of the surrogate acting as an assessor, an appeal does not lie in New York. The proper practice is to apply to the surrogate to review his decision, and appeal from the determination thereof.<sup>18</sup>

A surrogate has authority, upon an appeal to him from an order confirming the report of the appraiser, to receive proof that a transfer of property by the decedent in his lifetime was made in contemplation of death and therefore is taxable.<sup>19</sup>

If the supreme court assumes jurisdiction, on an appeal from an order appointing an appraiser, to ascertain the amount of the inheritance tax alleged by the authorities to be due, it will go no further than to ascertain whether there was any property subject to the appraisement.<sup>20</sup>

In Illinois, inheritance tax cases are appealed directly to the supreme court from the county court, regardless of whether revenue is directly involved.<sup>21</sup>

<sup>14</sup> *Estate of Culver* (Iowa), 133 N. W. 722.

<sup>15</sup> *People v. Sholem*, 238 Ill. 203, 87 N. E. 390.

<sup>16</sup> *Morrow v. Durant*, 140 Iowa, 437, 17 Ann. Cas. 850, 23 L. R. A., N. S., 474, 118 N. W. 781.

<sup>17</sup> *Estate of Brundage*, 31 App. Div. 348, 52 N. Y. Supp. 362.

<sup>18</sup> *Estate of Costello*, 189 N. Y. 288, 82 N. E. 139.

<sup>19</sup> *Estate of Thompson*, 57 App. Div. 317, 68 N. Y. Supp. 18.

<sup>20</sup> *Douglas County v. Kountze*, 84 Neb. 506, 121 N. W. 593.

<sup>21</sup> *People v. Sholem*, 238 Ill. 203, 87 N. E. 390.

The order of a surrogate "fixing the transfer tax upon an estate is an entirety, and a party claiming to be aggrieved thereby and taking an appeal should present upon that appeal every objection which he has to the order. It would lead to endless delay and confusion if he was permitted to take a separate appeal for each objection he had to the order of the surrogate. The practice in this class of cases has always been to consider only such objections as the appellant specifies, and to affirm the order as a matter of course in all other respects. The specification of one or more objections is deemed equivalent to a concession that the appellant regards the decree in all other respects correct. It is, in substance, an appeal only from those parts to which objection is made, and after an appeal from one part of a decree, a defeated appellant has never been permitted to appeal from other parts, and so on piecemeal, until he has obtained a review of the whole by successive appeals." <sup>22</sup>

<sup>22</sup> Estate of Cook, 194 N. Y. 400, 87 N. E. 786.

## CHAPTER XXI.

## PAYMENT AND ENFORCEMENT OF TAX.

- § 308. Method of Enforcement, in General.
- § 309. Failure of Statute to Prescribe Procedure.
- § 310. Law Governing Procedure.
- § 311. Accrual of Tax and Time for Payment.
- § 312. Limitation of Actions.
- § 313. Costs, Fees and Commissions.
- § 314. Adjudication in Another State—Full Faith and Credit.
- § 315. Payment in Another State.
- § 316. Payment to State or County Treasurer.
- § 317. Receipts for Payment.
- § 318. Refund to Taxpayer.
- § 319. Recovering Back Tax.
- § 320. Interest and Penalties.

§ 308. **Method of Enforcement, in General.**—The manner of enforcing inheritance taxes has, to some extent, already been considered in the chapters on “Persons or Fund Liable for the Tax and Lien of the Tax.”<sup>1</sup> Since an inheritance tax is on the succession rather than on the property, proceedings to enforce it are not in rem.<sup>2</sup> The proper mode of suing for a collateral tax in case of a legacy in remainder has been said to be by a bill in equity, in the nature of an information, in the name of the attorney general.<sup>3</sup> Suit to recover a tax should be brought directly against the heirs liable therefor, rather than against the succession, for the tax is their debt, not that of the succession.<sup>4</sup> A surrogate may enforce his order for the payment of a tax by proceedings for contempt, other than against executors, adminis-

<sup>1</sup> See secs. 260–273, ante. As to the power of a revenue agent in Kentucky to prosecute proceedings to collect a tax, see *Commonwealth v. Gaulbert*, 134 Ky. 157, 119 S. W. 779.

<sup>2</sup> *Estate of Wolfe*, 2 Con. 600, 15 N. Y. Supp. 539.

<sup>3</sup> *Attorney General v. Pierce*, 59 N. C. 240.

<sup>4</sup> *Succession of Pargoud*, 13 La. Ann. 367.

trators and trustees, but not before the issuance and return of execution.<sup>5</sup>

The discretionary power of a surrogate to appoint a special guardian for a minor interested in an estate can be exercised only when some reason exists therefor. Hence in proceedings to assess an inheritance tax, it is improper to make an allowance to a special guardian appointed for an infant party interested in remainder whose interest cannot be determined or taxed in that proceeding, wherein the only question presented is one between the state, the executor, and an adult life tenant.<sup>6</sup>

The state has the burden of proving the facts under which an inheritance tax may be imposed.<sup>7</sup>

**§ 309. Failure of Statute to Prescribe Procedure.—**

An inheritance tax statute is not defective in failing to provide a method for its enforcement if it expressly creates a liability on the part of the recipients of inherited estates to pay the amount of the tax to the county treasurer for the use of the state. He can maintain an ordinary action, based on such liability, against them whenever there is a refusal to make payment.<sup>8</sup> In case the statute clearly prescribes the method of enforcing collection of the tax, its validity is not affected by the fact that there is no established practice of the probate court in like cases for the service of citations out of that court, the hearing thereon, and the enforcement of the court's order.<sup>9</sup> It is not enough, however, for the legislature merely to declare certain transfers taxable; if no mode is provided for assessing and collecting the tax, the law

<sup>5</sup> Estate of Prout, 3 N. Y. Supp. 831.

<sup>6</sup> Estate of Post, 5 App. Div. 113, 38 N. Y. Supp. 977.

<sup>7</sup> Estate of Miller, 77 App. Div. 473, 78 N. Y. Supp. 930.

<sup>8</sup> Estate of McKennan (S. D.), 130 N. W. 33.

<sup>9</sup> Union Trust Co. v. Probate Court, 125 Mich. 487, 84 N. W. 1101.

is imperfect, and cannot, as to such transfers, be executed.<sup>10</sup>

**§ 310. Law Governing Procedure.**—The rights and liabilities of the parties in the matter of an inheritance tax are, in case of a change in the statutes, governed by the law in force at the time of the decedent's death, but the procedure for the ascertainment and enforcement of the tax is controlled by the statute in force at the time of the institution of the proceeding. This is in accordance with the general rule that, in the absence of words of exclusion, a statute which relates to the form of procedure or the mode of defending or attaining rights, is applicable to proceedings pending or subsequently commenced.<sup>11</sup>

**§ 311. Accrual of Tax and Time for Payment.**—The accrual of inheritance taxes, together with the time for their payment, in the case of powers of appointment and estates in remainder or upon contingency, has been considered in preceding chapters dealing with those subjects.<sup>12</sup> The general rule is, that the inheritance tax accrues on the death of the decedent, for the tax is on the succession, and it is at that time that the succession takes place.<sup>13</sup> The tax

<sup>10</sup> *Estate of Embury*, 19 App. Div. 214, 45 N. Y. Supp. 881, affirmed, 154 N. Y. 746, 49 N. E. 1096.

<sup>11</sup> *Estate of Davis*, 149 N. Y. 539, 44 N. E. 185; *Matter of Sloane*, 154 N. Y. 109, 47 N. E. 978; *Estate of Sterling*, 9 Misc. Rep. 224, 30 N. Y. Supp. 385.

<sup>12</sup> See secs. 78-103, ante.

<sup>13</sup> *Estate of Seaman*, 147 N. Y. 69, 41 N. E. 401; *Estate of Davis*, 149 N. Y. 539, 44 N. E. 185; *Appeal of Mellow*, 114 Pa. 564, 8 Atl. 183; *Prevost v. Greneaux*, 60 U. S. (19 How.) 1, 15 L. Ed. 572. For this rule applied to cases under the former United States revenue acts, see *May v. Slack*, Fed. Cas. No. 9336; *Hellman v. United States*, 15 Blatchf. 13, Fed. Cas. No. 6341; *United States v. New York L. I. & T. Co.*, 9 Ben. 413, Fed. Cas. No. 15,873; *United States v. Townsend*, 8 Fed. 306; *Sturges v. United States*, 117 U. S. 363, 29 L. Ed. 920, 6 Sup. Ct. Rep. 767.



accrues when the estate vests on the death of the owner, and is not affected by transfers or agreements of the persons succeeding to the property.<sup>14</sup> The right of the state to the tax vests, in point of time, at the time the estate vests, that is, upon the death of the owner;<sup>15</sup> and whether the succession is liable to be taxed is to be determined upon the conditions then existing.<sup>16</sup>

The time when the tax becomes due and payable varies more or less with the different statutes. In case payment is made within a specified time, the law usually allows a discount; in case payment is deferred beyond a time specified, interest is charged,<sup>17</sup> of which more will be said in the concluding sections of this chapter.

**§ 312. Limitation of Actions.**—The generality of the statutes are not clear as to the time limited for the commencement of actions to enforce inheritance taxes. Provisions in the Massachusetts inheritance tax statute that all taxes shall be due and payable at the expiration of two years from the qualification of the executor, and that the treasurer shall bring suit within six months after the taxes are due and payable, do not prevent the maintenance of a suit after the expiration of two years and six months from such qualification, where the executor is made liable for the taxes until paid, during which time they are a lien on the property.<sup>18</sup> And in that state a petition by the treasurer and receiver general of the commonwealth, praying the probate court to determine

<sup>14</sup> *Estate of Graves*, 242 Ill. 212, 89 N. E. 978; *Estate of Cummings*, 63 Misc. Rep. 621, 118 N. Y. Supp. 684.

<sup>15</sup> *National Safe Deposit Co. v. Stead*, 250 Ill. 584, Ann. Cas. 1912B, 430, 95 N. E. 973.

<sup>16</sup> *Pierce v. Stevens*, 205 Mass. 219, 91 N. E. 319.

<sup>17</sup> *Commonwealth v. Gaulbert*, 134 Ky. 157, 119 S. W. 779.

<sup>18</sup> *Howe v. Howe*, 179 Mass. 546, 55 L. E. A. 626, 61 N. E. 225.

whether an estate is subject to an inheritance tax and to fix its amount, is not barred either by the general or the special statute of limitations, although filed more than six years after the tax became payable.<sup>19</sup>

In California, according to a *nisi prius* decision, the defense of the statute of limitations is applicable to a proceeding against executors for the collection of the inheritance tax. Such a proceeding is barred, under the provisions of section 338 of the Code of Civil Procedure, by the lapse of three years after the accrual of the liability; and the liability is complete at or before the close of the administration. If the executor is regarded as occupying the position of a trustee for the state, this relation does not continue so as to prevent the running of the statute after proceedings have been had to fix the tax, and the amount thereof has been fixed and ordered paid, and the residue of the estate distributed and the administration closed.<sup>20</sup>

By statute enacted in 1899, the New York legislature declared that the statute of limitations should no longer be a defense to proceedings to collect the inheritance tax, except that as to real estate in the hands of bona fide purchasers the tax should be presumed to be paid and cease to be a lien after six years from the date of its accrual. This statute was made retrospective.<sup>21</sup>

The provision of the Pennsylvania statute that "the lien of the collateral inheritance tax shall continue until the said tax is settled and satisfied; provided, that the said lien shall be limited to the property chargeable

<sup>19</sup> *Bradford v. Storey*, 189 Mass. 104, 75 N. E. 256. In this case it is said that a tax is not a debt in the ordinary sense of the word, and is not founded upon a contract, express or implied.

<sup>20</sup> *Estate of Gordon*, 2 Cof. Pro. 138.

<sup>21</sup> *Estate of Moench*, 39 Misc. Rep. 480, 80 N. Y. Supp. 222; *Estate of Strang*, 117 App. Div. 796, 102 N. Y. Supp. 1062.

It has been held that a proceeding in New York to enforce the tax cannot be initiated until the expiration of eighteen months after the death of the decedent: *Frazer v. People*, 6 Dem. Sur. 174; *Estate of Moench*, 39 Misc. Rep. 480, 88 N. Y. Supp. 222.

therewith: and provided, further, that all collateral inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to have been paid, and cease to be a lien as against any purchasers of real estate"—does not extinguish the personal liability of heirs, devisees and legatees at the end of five years. The proviso is intended simply to quiet the title of purchasers of real estate. When there is no purchaser to protect, the lien of taxes due upon real estate, as well as the debt itself, will continue after five years.<sup>22</sup>

But a statute of Tennessee, identical with the Pennsylvania statute, has been given a broader construction and been held not merely applicable to purchasers of realty, but to establish a general limitation of five years in this class of cases.<sup>23</sup>

After forty-two years, an inheritance tax will be presumed to have been paid, not only on the ground of lapse of time, but from the presumption that the executor or administrator did his duty under his oath of office.<sup>24</sup>

**§ 313. Costs, Fees, and Commissions.**—Where a request to the state authorities is made to the probate court to make an order for the payment of an inheritance tax in excess of the amount chargeable under the law, or an appeal is taken by the attorney general from an order of the probate court fixing the tax, a "civil proceeding" is instituted by an officer of the state wherein the people are, under the Michigan statute, liable for costs to the same extent as though the proceeding were instituted by an individual.<sup>25</sup>

Under the New York transfer tax act of 1892, the costs and disbursements to which the district attorney

<sup>22</sup> Estate of Cullen, 142 Pa. 18, 21 Atl. 781.

<sup>23</sup> Miller v. Wolfe, 115 Tenn. 234, 89 S. W. 398.

<sup>24</sup> Estate of Stewart, 147 Pa. 383, 23 Atl. 599.

<sup>25</sup> Estate of Fox, 162 Mich. 531, 127 N. W. 668.

may deem himself entitled in case of success must be taxed in the same manner as costs in other proceedings in the surrogate's court. In order to entitle himself to a certificate that there was probable cause for issuing a citation to enforce the tax, so that the treasurer shall pay the expenses incurred in case the proceeding is unsuccessful, he must furnish satisfactory evidence to the surrogate that there was probable cause. An affidavit that simply states that he commenced the proceeding in good faith is not enough.<sup>26</sup>

Under the Pennsylvania statute of 1887, the register of wills of Allegheny county is entitled to commissions on the collateral inheritance tax collected by him and paid in to the state treasury.<sup>27</sup>

In Maryland a register of wills is not entitled to retain, as extra compensation, over and above the salary and expenses of his office allowed by the constitution, the five per cent commission allowed by law on the amount of taxes on collateral inheritances.<sup>28</sup>

In Tennessee, where the attorney of the county court clerk successfully prosecutes an action to recover an inheritance tax, he is entitled to a fee for his services, to be paid by the delinquent.<sup>29</sup> Where the clerk employs the state revenue agent to sue for a tax, and the suit is brought and tried in the chancery court without objection, the agent is entitled, in addition to his salary, to a fee, in his capacity as attorney, of five per cent of the tax.<sup>30</sup> The provisions of the act of 1897 to the effect that the fees provided by law shall be taxed against the losing party and turned over to the state, require that costs allowed a district attorney general in an inheritance tax case shall be so turned over.<sup>31</sup>

<sup>26</sup> Estate of McCarthy, 5 Misc. Rep. 276, 25 N. Y. Supp. 987.

<sup>27</sup> Allegheny County v. Stengel, 213 Pa. 493, 63 Atl. 58.

<sup>28</sup> Banks v. State, 60 Md. 305.

<sup>29</sup> Knox v. Emerson, 123 Tenn. 409, 131 S. W. 972.

<sup>30</sup> Shelton v. Campbell, 109 Tenn. 690, 72 S. W. 112.

<sup>31</sup> Harrison v. Johnston, 109 Tenn. 245, 70 S. W. 414.

The Louisiana statute does not provide for the payment of fees of an attorney employed by the tax collector to prosecute an action to recover a succession tax.<sup>82</sup>

**§ 314. Adjudication in Another State—Full Faith and Credit.**—The conclusiveness attending, under the New Jersey practice, the probate of a will, the settlement of the executor's account, and the final distribution of the estate pursuant to orders which the court made, after having decreed that all those who had neglected to bring in their claims were forever barred from their action therefor against the executor, renders repugnant to the full faith and credit clause of the United States constitution a subsequent assessment, under the New York laws, upon the personal estate of the decedent as a resident of that state, of a succession tax, which, under such laws, is made a lien on the property and a personal obligation of the transferees and executors.<sup>83</sup>

This adjudication by the supreme court of the United States has been distinguished in a New York case where Judge Miller says that as he reads the opinion of the United States court it decided: (1) That the adjudication respecting domicile was not binding upon anybody not a party to the proceeding. (2) That proceedings for the probate of wills and for the administration and distribution of the estates of decedents are proceedings in rem. (3) That such proceedings in their effect upon the res before the court are binding on all the world to the extent that they are conclusive within the jurisdiction where held. (4) That upon the proof of the New Jersey law, meager and unsatis-

<sup>82</sup> *Succession of Kohn*, 115 La. 71, 38 South. 896; *Succession of Levy*, 115 La. 377, 5 Ann. Cas. 871, 8 L. R. A., N. S., 1180, 39 South. 37, affirmed, *Cahen v. Brewster*, 203 U. S. 543, 8 Ann. Cas. 215, 51 L. Ed. 310, 27 Sup. Ct. Rep. 174.

<sup>83</sup> *Tilt v. Kelsey*, 207 U. S. 43, 52 L. Ed. 95, 23 Sup. Ct. Rep. 1.

factory though it was, the decree in that state barring all claims not presented, followed by a decree directing final distribution of the entire estate, involved a distribution of the estate freed from all demands, including that of New York state for taxes, and the exoneration of the executor therefor; that these decrees were conclusive in New Jersey upon all the world; and that therefore the assessment of a tax by New York state denied them full faith and credit. (5) That it was assumed below that the proceedings in New Jersey were duly had, and that the taxes as assessed were based on the provisions of the will, which derived its authenticity and its capacity to transmit property from the judicial proceedings in New Jersey; wherefore the jurisdiction of the New Jersey courts could not for the first time be attacked on appeal, although the fact of residence was relevant to that question—indeed, it was stated earlier in the opinion that an adjudication of residence was essential to the assumption of jurisdiction.<sup>34</sup>

In Washington, it has been decided in inheritance tax opinions where the decedent was a resident of Maine and left property in both states, and his will was probated in Maine, that the judgment of the probate court of the latter state is in Washington entitled to full faith and credit and conclusive as to the method of distribution.<sup>35</sup>

**§ 315. Payment in Another State.**—The payment of an inheritance tax to one state is not a defense to proceedings in another state to enforce a similar tax imposed by its laws in respect to the same property,<sup>36</sup> unless, as is now the case in some jurisdictions, the

<sup>34</sup> *Estate of Cummings*, 142 App. Div. 377, 127 N. Y. Supp. 109.

<sup>35</sup> *Estate of Clark*, 37 Wash. 671, 80 Pac. 267.

<sup>36</sup> *Appeal of Hopkins*, 77 Conn. 644, 60 Atl. 657; *Estate of Stanton*, 142 Mich. 491, 105 N. W. 1122; *Douglas County v. Kountze*, 84 Neb. 506, 121 N. W. 593; *Blackstone v. Miller*, 188 U. S. 189, 47 L. Ed. 439, 23 Sup. Ct. Rep. 277.

statutes expressly allow a rebate for payments made to other states or countries. Vermont is one of the commonwealths that makes such rebates, but it has been decided there that only so much in rebate can be allowed as has actually been paid elsewhere. Hence, if a discount was allowed in the foreign jurisdiction for prompt payment, the measure of the rebate is not the full amount of the tax, but the full amount less the discount.<sup>37</sup>

The payment of an inheritance tax by the executors to a foreign state in order to obtain property there situated should, in the absence of a contrary intention expressed in the will, be regarded as an expense of administration, to be paid from the general property of the estate, and not as a charge pro rata upon specific legacies.<sup>38</sup>

**§ 316. Payment to State or County Treasurer.**—A county treasurer has no interest in money collected under the inheritance tax law, except for commissions, and is not entitled to retain such money a longer period than is reasonably required for its transmission to the state treasurer. If he fails to make payment to the state treasurer within a reasonable time, he may be coerced by mandamus.<sup>39</sup>

The sureties on a bond given by a register in Pennsylvania, under the act of March 15, 1832, for the faithful execution of his duties and the payment of all moneys received for the use of the commonwealth, are not responsible for collateral inheritance taxes collected but not paid over by him.<sup>40</sup>

In New Jersey, where an executor has paid the tax on legacies, although it is his duty to deduct such

<sup>37</sup> *Estate of Meadon*, 81 Vt. 490, 70 Atl. 1064.

<sup>38</sup> *Kingsbury v. Bazeley*, 75 N. H. 13, 139 Am. St. Rep. 664, 20 Ann. Cas. 1355, 70 Atl. 916.

<sup>39</sup> *People v. Raymond*, 186 Ill. 454, 59 N. E. 7.

<sup>40</sup> *Commonwealth v. Toms*, 45 Pa. 408.

tax at settlement with his legatee, he may properly make the payments and have allowance for them in his final account. He is not ordinarily compelled to pay such tax until the expiration of the year allowed him by law for the settlement of the estate, and he should not be refused allowance for such interest as he would be required to pay if the tax were paid within the year.<sup>41</sup>

Section 8 of the Revised Code of North Carolina which directs the tax on legacies to strangers in blood, imposed by the preceding section, to be retained by the executor or administrator "upon his settlement of the estate," and directs the tax to be paid into the clerk's office, has reference to his settlement with the individual to whom the legacy is bequeathed, and not to the final settlement of the estate, and the tax must be paid into the office on the settlement with the legatee.<sup>42</sup>

**§ 317. Receipts for Payment.**—The statutes usually provide in detail for the issuance of receipts for the payment of inheritance taxes. In California, when the superior court has fixed the tax, the controller has no revisory power over its action, and cannot assail it collaterally; and if he declines to give any receipt for the amount of the tax as fixed by the court, he may be compelled by mandamus to receipt for so much money on account of the tax in the matter of the estate, so as not to prejudice the right of the state to appeal from the order fixing it, for the determination of all questions arising upon the record of the estate in relation thereto.<sup>43</sup>

**§ 318. Refund to Taxpayer.**—Various provisions are made by the different statutes for refunding to tax-

<sup>41</sup> Wyckoff v. O'Neil, 72 N. J. Eq. 880, 67 Atl. 32.

<sup>42</sup> Attorney General v. Allen, 59 N. C. 144.

<sup>43</sup> Becker v. Nye, 8 Cal. App. 129, 96 Pac. 333.



payers excessive or erroneous payments. Section 10 of the Illinois statute authorizes the state treasurer to refund the amount of taxes erroneously paid, but it does not authorize the county treasurer to do so.<sup>44</sup>

When a tax has been erroneously or unlawfully exacted, it is immaterial, so far as the right to a refund is concerned, whether the tax was paid voluntarily or under duress; and if the statute provides that the "state controller shall by order direct and allow the treasurer of the county to refund" the tax, he may be compelled by mandamus to discharge this duty.<sup>45</sup>

The surrogate may properly decline to insert, in the order vacating a tax upon an estate, a direction to the state controller to refund the amount of the tax, since the statute itself directs the refund to be made in such a case.<sup>46</sup>

If the decree fixing a tax is reversed on appeal while the tax remains in the hands of the county treasurer, the surrogate has power to direct him to refund it. It is only when the tax has been paid into the state treasury that the state controller has authority to order a refund.<sup>47</sup> Where, after payment of a tax under an order of the surrogate holding an estate subject to taxation, an appeal is taken and the order reversed, but in the meantime the tax has been paid by the controller of the city of New York to the state controller, restitution of the money thus paid will not be ordered to be made by the controller of the city of New York; the remedy, in such a case, is to obtain a refund from the state treasurer.<sup>48</sup>

<sup>44</sup> *People v. Griffith*, 245 Ill. 532, 92 N. E. 313.

<sup>45</sup> *Estate of Coogan*, 27 Misc. Rep. 563, 59 N. Y. Supp. 111.

<sup>46</sup> *Estate of Cameron*, 97 App. Div. 436, 89 N. Y. Supp. 977, affirmed, 181 N. Y. 560, 74 N. E. 1115.

<sup>47</sup> *Estate of Park*, 8 Misc. Rep. 550, 29 N. Y. Supp. 1081.

<sup>48</sup> *Estate of Howard*, 54 Hun, 305, 7 N. Y. Supp. 594; *Estate of Hall*, 54 Hun, 637, 7 N. Y. Supp. 595.

When no appeal has been taken, within the time allowed by law, from an order fixing an inheritance tax, the order becomes conclusive, and it has been held that the surrogate has no authority to modify it and allow a partial refund of the tax for a debt of the estate subsequently discovered.<sup>49</sup> But according to another decision, an error in including an item for taxation may be corrected within two years from the entry of the order fixing the tax, and a refund of the tax ordered.<sup>50</sup> This rule is based upon a statute authorizing the surrogate, if application therefor is made within a specified time, to direct taxes to be refunded.<sup>51</sup>

Since a refund of taxes paid is in the nature of a privilege rather than an absolute right, the legislature may attach conditions to its exercise, and one of these may be that a claim for a refund will be barred if not made within a specified time.<sup>52</sup>

A temporary payment made to the state controller on account of the inheritance tax is deductible from the amount finally found due; and if nothing is found to be due, then it should be refunded.<sup>53</sup>

**§ 319. Recovering Back Taxes.**—The general rule is well settled that void or illegal property taxes, after having been paid with knowledge of the facts, and without fraud or compulsion, cannot be recovered back from the state or municipality at the suit of the taxpayer.<sup>54</sup> This rule is applicable to voluntary payments of inheritance taxes, unless the statute makes provision

<sup>49</sup> *Estate of Hamilton*, 41 Misc. Rep. 268, 84 N. Y. Supp. 44.

<sup>50</sup> *Estate of Willet*, 51 Misc. Rep. 176, 100 N. Y. Supp. 850.

<sup>51</sup> *Estate of Sherar*, 25 Misc. Rep. 138, 54 N. Y. Supp. 930.

<sup>52</sup> *Estate of Hoople*, 179 N. Y. 308, 72 N. E. 229.

<sup>53</sup> *Estate of Skinner*, 106 App. Div. 217, 94 N. Y. Supp. 144; *People v. Williams*, 69 Misc. Rep. 402, 127 N. Y. Supp. 749.

<sup>54</sup> See note in 94 Am. St. Rep. 425.

for refunding them or permitting their recovery in case they have been improperly exacted.<sup>55</sup>

The law of some states contemplates that when property taxes are paid under protest that they are illegal, or with notice that the payer denies their legality and intends to sue to recover them back, a sufficient foundation for such suit is laid; and this rule, where recognized, would seem applicable to inheritance taxes. But however this may be, it has been decided that payment of such taxes, upon the demand of the collector, coupled with a threat that unless promptly paid they will be enforced with interest and penalty, is an involuntary payment, which will serve as the basis for an action to recover back the money.<sup>56</sup>

In Iowa a taxpayer cannot recover interest in his suit to recover an excess of inheritance tax paid under protest. The statute permitting such recovery does not provide for the payment of interest to any claimant for taxes overpaid; it creates no liability against the state for the use of the money.<sup>57</sup> But in New York it

<sup>55</sup> Estate of Coogan, 27 Misc. Rep. 563, 59 N. Y. Supp. 111; Estate of Mather, 90 App. Div. 382, 85 N. Y. Supp. 657, 179 N. Y. 526, 71 N. E. 1134.

Under the Wisconsin statute, one who is aggrieved by the orders of the county court in fixing and assessing the inheritance tax is not required to appeal, but may sue to recover back the tax: *Beals v. State*, 139 Wis. 544, 121 N. W. 347.

Where one has voluntarily paid a transfer tax in New York under a mistake of law which is not discovered until after the court of last resort has decided the property not subject to the tax, the surrogate will not grant him relief, since it is important that there shall be finality to decree imposing the tax: *Estate of Von Post*, 35 Misc. Rep. 367, 71 N. Y. Supp. 1039.

Where a tax has been paid under a statute subsequently declared unconstitutional, the amount thereof may be recovered back: *Miller v. Howey (Estate of Wood)*, 91 App. Div. 3, 86 N. Y. Supp. 269; *Estate of Scrimgeour*, 80 App. Div. 388, 80 N. Y. Supp. 636, 175 N. Y. 507, 67 N. E. 1089.

<sup>56</sup> *Herold v. Kahn*, 159 Fed. 608, 86 C. C. A. 598, 163 Fed. 947, 90 C. A. 307.

<sup>57</sup> *Wieting v. Morrow*, 151 Iowa, 590, 132 N. W. 198.

has been decided that where the state or municipality becomes liable to refund a transfer tax because it was illegal or void, the right to interest follows without any express provision on the subject. The tax in respect to which this decision was rendered was paid under a statute afterward declared unconstitutional. Moreover, the general law in that state for the assessment and collection of taxes on property provides that in case of payment of an illegal or excessive tax, subsequently corrected by the courts, it shall be repaid to the taxpayer with interest.<sup>58</sup>

**§ 320. Interest and Penalties.**—In order to encourage the prompt payment of inheritance taxes, the law usually allows a discount if they are paid within a specified time after their accrual; and imposes interest if payment is delayed beyond a certain time. In case payment is still further delayed, a higher rate of interest, or a penalty, is added,<sup>59</sup> except where there has been necessary litigation or other unavoidable causes for delay in the settlement of the estate and the ascertainment of the tax.<sup>60</sup> But while delays due to such

<sup>58</sup> Estate of O'Berry, 179 N. Y. 285, 72 N. E. 109.

<sup>59</sup> Bradford v. Storey, 189 Mass. 104, 75 N. E. 256; Estate of Sanford (Neb.), 133 N. W. 870; Estate of Wormser, 51 App. Div. 441, 64 N. Y. Supp. 897; Sprankle v. Commonwealth, 2 Walk. (Pa.) 420; Commonwealth v. Smith, 20 Pa. 100; Estate of Lines, 155 Pa. 378, 26 Atl. 728.

<sup>60</sup> People v. Prout (Estate of Prout), 53 Hun, 541, 6 N. Y. Supp. 457; Estate of Bolton, 35 Misc. Rep. 688, 72 N. Y. Supp. 430; Estate of Bates, 7 Ohio N. P. 625, 5 Ohio S. & C. P. Dec. 547; Miller v. Commonwealth, 111 Pa. 321, 2 Atl. 492; Appeal of Commonwealth, 128 Pa. 603, 18 Atl. 386; State v. Pabst, 139 Wis. 561, 121 N. W. 351.

An executor is responsible for the amount of interest and penalties imposed by the New Jersey statute regulating the payment of the collateral inheritance tax, resulting from his neglect to pay the tax within the limit of time required to prevent such additional charges to the estate: Wyckoff v. O'Neil, 71 N. J. Eq. 729, 71 Atl. 388.

Section 2650 of the New York Code of Civil Procedure, suspending action by an executor after he has been served with a citation upon a petition to revoke probate until a decree is made in the proceeding, does

causes may be ground for remitting the penalty, or the increased interest, they do not prevent the imposition of the ordinary interest from the time the statute declares it shall run.<sup>61</sup>

Where, after the accrual of an inheritance tax, the statute imposing it is repealed and a new one enacted with a clause saving any "right accruing, accrued or acquired" under the law repealed, the persons subject to the tax are entitled to any immunities or privileges in respect to the time of payment that were provided by the repealed statute, and it governs the liability for interest and penalties.<sup>62</sup>

not take away the right to charge interest, prior to such decree, on a tax imposed by the transfer tax act; the case is provided for by the provision of the act directing that a modified rate of interest should be charged where, "by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, the estate" cannot be settled: *Estate of Stewart*, 131 N. Y. 274, 14 L. R. A. 836, 30 N. E. 184.

Relief from the penalty will not be granted when the only reasons advanced therefor are that the executor was ignorant of the law and hardship will result to the legatees: *Estate of Platt*, 8 Misc. Rep. 144, 29 N. Y. Supp. 396.

It is the duty of executors, where a part of the the estate cannot be settled up within the year, to estimate the amount thus suspended, and pay the collateral inheritance tax on the balance; otherwise they are chargeable with interest thereon at the rate of twelve per cent per annum: *Appeal of Commonwealth*, 34 Pa. 204.

<sup>61</sup> *People v. Rice*, 40 Colo. 508, 91 Pac. 33, a leading case holding that six per cent interest was payable from the death of the decedent, although his will was contested and suits were brought against a corporation in which he was a stockholder, which suits, if successful, would have rendered his estate insolvent: *Estate of Miller*, 182 Pa. 157, 37 Atl. 1000, holding, where there had been unavoidable delay in the settlement of an estate, the penalty should not be imposed but interest should be required after the expiration of one year from the death of the decedent, although a large portion of the estate did not come into the executor's hands until after such year had elapsed; *Estate of Moore*, 90 Hun, 162, 35 N. Y. Supp. 783, holding, in case of unavoidable delay and several years' litigation, no penalty should be exacted, but interest should be paid as part of the tax; *Shelton v. Campbell*, 109 Tenn. 690, 72 S. W. 112.

<sup>62</sup> *Estate of Fayerweather*, 143 N. Y. 114, 38 N. E. 278; *Estate of Milne*, 76 Hun, 328, 27 N. Y. Supp. 727; *Estate of Moore*, 90 Hun, 162, 35 N. Y. Supp. 783.

## CHAPTER XXII.

## FORMS.

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- § 369. District Attorney Proceedings—Order Appointing Appraiser.
- § 370. District Attorney Proceedings—Decree Fixing Tax, Directing Payment, etc.

§ 339. **Explanatory.**—When the variations in the statutory provisions and the court procedure in the different American commonwealths are considered, it becomes obvious that to draft a set of inheritance tax forms adapted, in all details, to the practice in the different states of the

Union would be impracticable. Nevertheless, it is believed that the different jurisdictions have, in matters of procedure, enough in common so that forms suited to one will be a substantial aid in others as indicating the steps to be taken in any proceeding, the points essential to be stated, and the phraseology suitable for clothing them.

It has therefore been thought expedient, in this book, to give the forms adapted to some particular state; and as the litigation has been more extensive, and hence presumably the practice has become better settled, in New York than elsewhere, that state has been selected as a model. With modifications here and there to meet local conditions, it is believed that the New York forms will prove very serviceable and satisfactory in any jurisdiction, for they have been prepared by Edward H. Fallows, Esq., of the New York Bar, whose wide experience in inheritance tax matters peculiarly qualifies him for this work. These forms appeared originally in his book on the "Collateral Inheritance and Transfer Tax Law of the State of New York," and have been received with unusual favor by the legal profession. They are here printed with his permission.

**§ 340. Petition for Appointment of Appraiser in Estate of Resident Decedent.**

Surrogate's Court, County of .....

In the Matter of the Transfer Tax }  
 Upon the Estate of }  
 ..... }  
 Deceased.

To the Surrogate's Court of the County of .....

The petition of ..... respectfully shows:

First. That your petitioner is the .....  
 .....  
 decedent, and as such a person interested in the estate of the said decedent.

Second. That the said decedent departed this life on the ..... day of ....., at .....; that the said decedent was a resident of .....

Third. That letters ..... on the estate of said decedent were, on the ..... day of ....., issued to your petitioner by the Surrogate's Court of the County of ....., and that his postoffice address is .....

Fourth. That, as your petitioner is informed and believes, the property of said decedent, or some portion thereof or some interest therein, is or may be subject to the payment of

the tax imposed by the law in relation to taxable transfers of property.

Fifth. That all persons who are interested in said estate and who are entitled to notice of all proceedings herein, and their postoffice addresses, are as follows:

Controller, Albany, N. Y.

.....  
.....  
.....

That all the above named are of full age and sound mind, except .....

Wherefore your petitioner prays that you will designate an appraiser, as provided by law.

Dated, .....,

Petitioner.

County of ....., } ss.:  
..... }

....., being duly sworn, deposes and says: That ..he is the petitioner herein; that ..he has read the foregoing petition subscribed by h.. and knows the contents thereof; that the same is true to h.. own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters ..he believes it to be true.

.....

Sworn to before me, this ..... day of .....

**§ 341. Petition for Appointment of Appraiser in Estate of Nonresident Decedent.**

Surrogate's Court, ..... County.

In the Matter of the Transfer Tax }  
Upon the Estate of }  
..... }  
Deceased. }

To the Surrogate's Court:

The petition of ..... respectfully shows:

First. That he is the Controller of the State of New York. Upon information and belief:

Second. That on or about the ..... day of ....., ....., then residing without the State of New York, was seised and possessed of property in the County of ..... and State of New York subject to taxation under the Act in relation to Taxable Transfers of Property to the value and upwards of ten thousand dollars (\$10,000), and



that on the said ..... day of ..... the said decedent departed this life.

Third. That said decedent made a last Will and Testament, which was thereafter and on or about the ..... day of ....., duly admitted to probate by the ..... Court of the County of ....., State of ....., by the terms of which said decedent appointed.....

Fourth. That said property, or some part thereof, is subject to the Act in relation to Taxable Transfers of Property; that no payment of such tax has been made, and that no proceeding has been brought to fix and determine the same by the representatives of said decedent, although said property has been, or is about to be, removed from the State of New York without the payment of said tax.

That no application for letters, ancillary or otherwise, has been made by the representatives of said decedent in ..... County.

Fifth. That all the persons who are interested in said estate and who are entitled to notice of all proceedings, and their addresses, are as follows:

Controller, Albany, N. Y.

.....  
 .....  
 .....

Wherefore, your petitioner prays for the appointment of some competent person as appraiser, as provided by law.

Dated, Albany, N. Y.

.....

Note: Verification same as for resident petition.

### § 342. Order Appointing Appraiser.

At a Surrogate's Court, held in and for the County of .....  
 ....., at the County Courthouse in the .....  
 of ....., on the ..... day of .....

Present: Hon. ...., Surrogate.

In the Matter of the Transfer Tax }  
 Upon the Estate of }  
 ..... }  
 Deceased.

On reading and filing the petition of ..... of said decedent, I do hereby, pursuant to the requirement of Chapter 658 of the Laws of 19..., direct ....., Esq., to fix the fair market value of the property which was of the above-

named decedent and which is subject to the payment of any tax imposed by Article X, Chapter 908, Laws of 19..., and the Acts amendatory thereof and supplemental thereto.

**§ 343. Oath of Appraiser.**

Surrogate's Court, ..... County.

In the Matter of the Transfer Tax }  
Upon the Estate of }  
....., }  
Deceased. }

State of New York, }  
County of ..... } ss.:

....., being duly sworn, doth depose and say that he is the appraiser appointed in this case by order of Hon. ...., Surrogate, dated the ..... day of ....., under and in pursuance of Article X of the Tax Law, as amended, in relation to Taxable Transfers, and that he will faithfully and fairly perform the duties of such appraiser, according to the best of his understanding.

Sworn to before me, this ..... day of .....  
.....,  
.....

**§ 344. Appraiser's Notice of Hearing.**

Surrogate's Court, County of .....

In the Matter of the Transfer Tax }  
Upon the Estate of }  
....., }  
Deceased. }

You will please to take notice that, by virtue of an order of Hon. ...., Surrogate of the County of ....., made and dated the ..... day of ....., 19..., and pursuant to provisions of Chapter 908 of the Laws of 19..., relating to Taxable Transfers of property, and the acts amendatory thereof, I shall on the ..... day of ....., 19..., at ..... o'clock in the ..... noon of that day, at ....., in the ....., proceed to appraise at its fair market value all the property of said ....., deceased, late of ....., passing by h.. last Will and Testament (or by the Intestate Laws of the

State of New York), which is subject to the payment of the tax imposed by the said Act and the Acts amendatory thereof.

And such of you as are hereby notified as are under the age of twenty-one years, are required to appear by your guardian, if you have one, or, if you have none, to appear and apply for one to be appointed, or in the event of your neglect or failure to do so, a guardian will be appointed by the Surrogate to represent and act for you in the proceeding.

.....,  
Appraiser.

....., 19...  
To .....  
.....

### § 345. Affidavit of Mailing of Notice of Hearing.

.....County of ....., ss.:

....., a Clerk in ....., being duly sworn, says, that he is over eighteen years of age, and that on the ..... day of ....., 19..., he deposited in the postoffice, at ....., a copy of the foregoing notice, contained in securely closed post-paid wrappers, directed to each of the above-mentioned persons, respectively, at the address set opposite their names, being all the persons known to have or claim an interest in the property passing by the will of ....., or by the Intestate Laws of this State, which is subject to the payment of the tax imposed by the said acts.

.....  
Sworn to before me, this ..... 19...

### § 346. Subpoena of Appraiser.

The People of the State of New York, to.....  
.....  
Greeting:

We command you, That all business and excuses being laid aside, you and each of you appear and attend at ..... in ....., in the City of ....., on the ..... day of ....., 19... at ..... o'clock, in the ..... noon, before the undersigned, heretofore duly designated by the Hon. ...., Surrogate of the County of ....., under the Transfer Tax Acts as Appraiser, in a certain proceeding now pending in the Surrogate's Court for the County of ....., entitled "In the matter of the Appraisal under the Transfer Tax Acts of the property of ....., deceased," to testify what you and each of you

may know concerning the estate of the said decedent, on the part of (the Controller of the State of New York), and that you bring with you and then and there produce at the time and place aforesaid .....

.....  
and for a failure to attend, you will be deemed guilty of a contempt of Court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit Fifty Dollars in addition thereto.

Witness, ....., Appraiser, at No. ....,  
in the ..... and City of ....., the .....  
day of ....., one thousand nine hundred and .....

.....,  
Appraiser.

**§ 347. Request to Superintendent of Insurance.**

Chambers of the Surrogate's Court,  
County of .....,  
....., .....

Estate of .....,  
Deceased.

Date of death .....

Dear Sir: In pursuance of Chapter 483, Laws of 19..., and the acts amendatory thereof and supplemental thereto, you are hereby requested to determine and ascertain the values of the following Estates, Annuities and Interests.

NAME.	AGE.	LEGACY OR ESTATE.	Value or Amount.	

To .....,  
Superintendent of the Insurance Department.

Yours respectfully,

.....,  
Surrogate.

**§ 348. Report of Appraiser.**

Surrogate's Court, County of .....

In the Matter of the Appraisal of  
the Estate of ....., Deceased,  
Under the Acts in Relation to the  
Taxable Transfers of Property. }

Decedent died ....., 19..., a legal resident of the  
County of ..... and State of .....

**Report of Appraiser.**

To Hon. ....

Surrogate of ..... County, New York.

I, the undersigned appraiser, who was by an order of the  
Surrogate of ..... County, duly made and entered on  
the ..... day of ....., 19..., directed to appraise the  
property of said decedent, at its fair market value at the  
time of the transfer thereof, in pursuance of the laws in rela-  
tion to Taxable Transfers of Property,

**Do Respectfully Report:**

First. That pursuant to Chapter 908 of the Laws of 19...  
as amended, I duly took and subscribed the oath prescribed  
by Statute, and filed the same as therein provided.

Second. That on the ..... day of ....., 19..., I  
gave notice by mail, postage prepaid, to such persons, cor-  
porations, etc., known to have, or claim an interest in any  
property of said decedent subject to the payment of any tax  
imposed by said laws, including the Controller of the State  
of New York (and those persons and corporations named  
by the Surrogate in his said order), of the time and place  
at which I would appraise said property, a true copy of  
which notice together with proof of mailing is hereto an-  
nexed.

That the names of those to whom I mailed such notices,  
properly addressed, as appears by proof of mailing, are as  
follows:

.....State Controller, Albany, N. Y.  
.....  
.....  
.....

Surrogate.

.....  
 .....  
 .....  
 .....  
 .....  
 .....

Third. At the time and place in said notice stated, namely, on the ..... day of ....., 19..., (and at other and subsequent times and divers places to which these proceedings were regularly adjourned), I appraised all the property, real and personal, of which the said decedent died possessed, and subject to the payment of said Transfer Tax, at its fair market value at the time of said transfer, as follows, namely:

Personal Estate.

(It is desired that the appraiser should classify the property in the following order:—1, Bonds; 2, Stocks; 3, Bonds and Mortgages on real estate, promissory notes, etc.; 4, Cash in Banks; 5, All other Personal Property.)

DESCRIPTION OF PROPERTY.	Par value.	Fair market value at time of decedent's death.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
Total.....	.....	.....

**Real Estate.**

(If the real estate of decedent passes by will or the Statute of Descent to Persons, or by will to Corporations or Institutions, exempt by said Acts, do not appraise the same.)

BRIEF DESCRIPTION.	Fair market value at time of decedent's death.
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
Total.....	.....

Fourth. I further report that decedent's estate is subject to the following deductions on account of debts, claims, expenses of administration and commissions, as follows:

DEBT OR CLAIM OF.	Nature of same.	Amount.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
Total.....	.....	.....





Sixth. I further report that all of said persons interested in said estate are of sound mind, and of full age, except,....

Seventh. I further report that the following appearances were made before me in this proceeding:

Eighth. I further report as follows:

Name of Decedent, .....

Date of Decedent's death, .....

Decedent was a resident of the ..... of .....

County of ....., State of .....

Decedent left ..... will.

Letters ..... were issued by the Surrogate to the

County of ....., to .....

whose Postoffice address is.....

That the 6 months limitation expires on the ..... day of ..... 19...

That the 18 months limitation expires on the ..... day of ..... 19...

Ninth. I further report that attached hereto is all the testimony taken by me, and the copies of all papers presented to me in this proceeding, namely:

Tenth. I do further report, that the said decedent made no transfer of any property by deed, grant, bargain, sale or gift in contemplation of death, or intended to take effect in possession or enjoyment at or after the death of said decedent.

I further report that there was no necessary litigation, or unavoidable cause of delay, by reason of any claim made upon the estate of said decedent, or any litigation pending in which the estate of said decedent was interested.

Eleventh. I do further report, .....  
 .....  
 .....  
 .....  
 .....  
 .....  
 All of which is respectfully submitted, in duplicate, at ....  
 ....., this ..... day of ....., 19...

Appraiser.

(Attach all testimony, exhibits and papers here.)

**§ 349. Order Fixing Tax.**

At a Surrogate's Court, held in and for the County of  
 ....., at the County Courthouse, in the .....  
 of ....., on the ..... day of .....,  
 19...

Present: Hon. ...., Surrogate.

In the Matter of the Transfer Tax }  
 Upon the Estate of }  
 ..... }  
 Deceased.

Upon reading the report of the appraiser, .....,  
 Esq., duly filed herein on the ..... day of .....,  
 wherein it appears that said decedent died on the .....  
 day of ....., ....., and upon motion of .....,  
 Attorney for the .....,

It is Ordered and Adjudged

That the cash value of the property referred to in said  
 report, the transfer of which is subject to the tax imposed  
 by the act in relation to taxable transfers of property and  
 the tax to which said transfers are liable is as follows:

BENEFICIARY.	Cash value of interest.	Tax assessed thereon.

**§ 350. Notice of Assessment of Tax by Surrogate.**

Surrogate's Court, ..... County.

In the Matter of the Transfer Tax  
 Upon the Estate of  
 .....  
 Deceased. }

To .....

You are hereby notified that I have assessed and fixed the cash value of such interest, estate, legacy or property as you and each of you are entitled to receive from the estate of said ....., deceased, and the amount of the tax to which the same is liable, under the laws in relation to taxable transfers of property, as follows:

PROPERTY.	Persons entitled to such property.	Cash value.	Tax.

**§ 351. Notice of Appeal to Surrogate.**

Surrogate's Court, ..... County.

In the Matter of the Appraisal  
 Under the Act in Relation to  
 Taxable Transfers of Property of  
 the Property of  
 .....  
 Deceased. }

Sirs:—

Please take notice that ..... is dissatisfied with the appraisement herein of the property of the said ....., deceased, and hereby objects to the report of the Appraiser filed herein on ....., ...., and to the order or decree made herein, fixing, assessing and determining the transfer tax in respect of the property of the said decedent and entered herein on ....., and hereby appeals to the Surrogate from the said appraisal and said assessment and determination of said tax and from the said order or decree.

The grounds upon which said appeal is taken are:

.....  
 .....  
 .....

Dated, .....

.....,  
 Attorney for.....

To

....., Esqs.,  
 Attorneys for .....

.....,

.....

To

....., Esq.,  
 Clerk of the Surrogate's Court,  
 ..... County.

### § 352. Order on Appeal.

At a Surrogate's Court, held in and for the County of  
 ....., at the County Courthouse, in the .....  
 of ....., on the ..... day of ....., 19...

Present: Hon. ....,

In the Matter of the Transfer Tax }  
 Upon the Estate of }  
 ..... }  
 Deceased. }

An appeal having been taken by the ..... from the  
 order fixing tax entered herein on the ..... day of ....  
 ....., 19..., upon the report of the appraiser filed  
 herein on the ..... day of ....., 19..., on the  
 grounds that the ..... as more fully set forth and  
 described in the notice of appeal duly filed herein,.....

And said appeal coming on to be heard, after hearing  
 ....., Esq., for the ....., Appellant, and  
 ....., Esq., for the ....., Respondent.

Now, on motion of ....., Attorney for the .....

It is Ordered and Adjudged

That said appeal be and the same hereby in all respects is

.....  
 It is Further Ordered and Adjudged  
 .....

**§ 353. Notice of Appeal to Appellate Division.**

Surrogate's Court, County of .....

In the Matter of the Transfer Tax  
 Upon the Estate of  
 .....  
 Deceased. }

Sirs:—

Please take notice that A. B., executor of the last will and testament (or administrator of the goods, chattels and credits) of C. D., deceased, hereby appeals to the Appellate Division of the Supreme Court of the State of New York for the ..... Department, from the order of the Surrogate of the County of ....., heretofore made and entered herein, on the ..... day of ....., affirming the order theretofore made and entered on the ..... day of ....., fixing a tax upon the estate of said decedent under the act relating to Taxable Transfers and from each and every part thereof (or from so much thereof as purports to fix a tax upon, etc.).

Dated, the ..... day of .....

Yours, etc.,

.....  
 Attorney for C. D., executor of the Last Will and Testament  
 (or administrator of the goods, chattels and credits)  
 of E. F., deceased, appellant.

To ....., Esq.,  
 Clerk of the Surrogate's Court of the County of.....

To ....., Esq.,  
 Attorney for the Controller of the State of New York, or  
 County Treasurer of the County of .....

**§ 354. Petition for Remission of Penalty.**

Surrogate's Court, County of .....

In the Matter of the Transfer Tax }  
 Upon the Estate of }  
 ..... }  
 Deceased. }

To the Surrogate's Court of the County of .....:

The petition of ..... respectfully shows:

That he resides at ..... of .....

That said decedent died on the ..... day of .....  
 ....., a resident of .....

That proceedings have been had herein for the determination of the transfer tax upon the estate of said decedent as follows:

.....  
 .....  
 .....  
 .....  
 .....

That more than eighteen months have elapsed since the date of death of said decedent and a penalty of 10% per annum from the date of death to the date of payment as provided by statute is due because of the nonpayment of this tax.

That by reason of .....  
 .....  
 (state the cause of delay in payment of the tax. It must be unavoidable, such as litigation, etc.)

That your petitioner is desirous of paying such tax and that in order to obtain the proper final receipt therefor from the State Controller your petitioner makes this application pursuant to the provisions of said act for the remission of the penalty, incurred by reason of the nonpayment of such tax within eighteen months after the date of death of said decedent, from 10% to interest at 6%.

Wherefore your petitioner prays that an order be made remitting the penalty upon the tax heretofore fixed herein from 10% to 6%, to be charged upon said tax from the accrual thereof, to wit: from the date of death of said decedent to the date of payment; provided such payment be made within ..... days from the date of the entry of the order

of the surrogate on this application; and that your petitioner have such further or other relief as to the Court may seem just and proper.

**§ 355. Notice of Motion to Remit Penalty.**

Surrogate's Court, ..... County.

In the Matter of the Transfer Tax }  
 Upon the Estate of }  
 ..... }  
 Deceased. }

Please take notice that on all the papers and proceedings herein and on the affidavit herewith served of A. B., (executor or administrator of ....., deceased), verified on the ..... day of ....., I will apply to the Surrogate of the County of ....., at a Surrogate's Court (or at Chambers of the Surrogate) to be held in said county in ..... on the ..... day of ....., at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order remitting the penalty of 10% upon the tax heretofore fixed upon the estate of the above-named decedent, by order of the Surrogate of said County made and entered the ..... day of ....., to interest at the rate of 6% per annum from the date of the accrual of the said tax, to wit: the date of the death of the said decedent, which occurred on the ..... day of ....., until the date of the payment of said tax, provided said payment be made within ..... days after the entry of the order of the said Surrogate to be made upon this application.

Dated, the ..... day of .....

To Hon. ....

Contrôller of the State of New York (or Hon.  
 ....., County Treasurer of the  
 County of .....).

**§ 356. Order Remitting Penalty.**

At a Surrogate's Court held in and for the County of .....  
 at the County Courthouse, in the .....  
 of ....., on the ..... day of ....., 19...

Present: Hon. ...., Surrogate.

In the Matter of the Transfer Tax }  
 Upon the Estate of }  
 ..... }  
 Deceased. }

Upon reading and filing the petition of ....., duly  
 verified on the ..... day of ....., wherein it ap-  
 pears that payment of the transfer tax as heretofore fixed  
 has been unavoidably delayed and good cause having been  
 shown for such nonpayment and due notice of motion hav-  
 ing been given to ....., Esq., attorney for the State  
 Controller, now on motion of ....., Esq., attorney  
 for the petitioner herein, it is

Ordered and Adjudged that the penalty of 10% upon  
 said tax be remitted and that interest be charged thereupon  
 at the rate of 6% from the date of accrual of said tax, to  
 wit: the ..... day of ....., ..... the date of death  
 of said decedent, to the date of payment thereof, pro-  
 vided that payment be made within ..... days after the  
 entry of this order.

**§ 357. Petition for Order Fixing Tax Without Appraiser.**

Surrogate's Court, County of .....

In the Matter of the Transfer Tax }  
 Upon the Estate of }  
 ..... }  
 Deceased. }

To the Surrogate's Court of the County of .....

The petition of ..... respectfully shows that he  
 resides at ....., in the ..... of .....

That said decedent died on the ..... day of .....,  
 ....., and that at the time of h.. death was a resident of  
 .....

That said decedent left a last will and testament, which  
 was duly admitted to probate by the ..... Court of



....., ....., and letters testamentary were duly issued to deponent, ....., who has duly qualified and is now acting as such.

That hereto annexed and marked Schedule "A" is a list of all the property, real or personal, of which said decedent died seised and possessed, including any interest accrued thereon at date of death.

That hereto annexed and marked Schedule "B" and made a part hereof is an itemized list of all the debts of said decedent which were due and owing at the time of death, funeral and administration expenses, and commissions of the executor.

That hereto annexed and marked Schedule "C" is a true copy of the last will and testament of said decedent.

That hereto annexed and marked Schedule "D" is a list of the beneficiaries under the last will and testament, with their addresses and the share of the estate received by them.

That all the parties in interest, namely, those persons mentioned in Schedule "D," are alive, of full age and sound mind, except:

.....  
 .....  
 .....

Your petitioner therefore prays that said Surrogate appraise the value of said decedent's estate and fix the amount of tax assessable thereon without the appointment of an appraiser.

Note: In addition to the averments in said petition it should be stated specifically whether decedent died possessed of any silverware, jewelry, household furniture, personal effects, statuary, works of art, paintings, pictures, books, bric-a-brac, mortgages, promissory notes or any interest therein, any claims or unlisted securities which are alleged to be less than their face value, any real estate in the State of New York. If there is a life estate, give name and age of life tenant and name of remainderman. State whether decedent made any transfer or conveyance of real or personal property prior to death in contemplation of death or intended to take effect at or after death; if so, what property and of what value. State whether deponent has made diligent search for property of every kind, nature and description left by decedent and that . . he has been able to discover only that mentioned in h. . affidavit, and that he verily believes that decedent left no property, either real or personal, except that set forth in the petition. State

whether decedent had any life insurance, any interest in any business or interest in any other estate; whether any reversion fell in by reason of said decedent's death; whether decedent had any interest in any copartnership or any business and the value thereof. State whether decedent was given power of disposition of property by the will of another.

**§ 358. Order Fixing Tax Where No Appraiser Appointed.**

At a Surrogate's Court, held in and for the County of .....  
 at the County Courthouse, in the .....  
 of ....., on the ..... day of ....., 19...

Present: Hon. ...., Surrogate.

In the Matter of the Transfer Tax }  
 Upon the Estate of }  
 ..... }  
 Deceased.

Upon reading and filing the petition of ....., duly verified on the ..... day of ....., ....., wherein it appears that said decedent died on the ..... day of ....., ....., and due notice of motion having been given to ....., Esq., attorney for the State Controller, on motion of ....., Esq., attorney for the petitioner, it is

Ordered and Adjudged that the cash value of the property referred to in said petition, the transfer of which is subject to the tax imposed by the act relating to taxable transfers of property and the tax to which said transfers are liable is as follows:

BENEFICIARY.	Cash value of interest.	Tax assessed thereon.
.....	.....	.....

**§ 359. Petition to Declare Estate Exempt.**

Surrogate's Court, County of .....

In the Matter of the Transfer Tax  
 Upon the Estate of  
 .....  
 Deceased. }

To the Surrogate's Court of the County of .....:

The petition of ..... respectfully shows that ..he resides at ....., in the ..... of .....

That said decedent died on the ..... day of ....., ....., and that at the time of h.. death was a resident of ....., .....

That said decedent left a last will and testament, which was duly admitted to probate by the ..... Court of ....., ....., and letters testamentary were duly issued to deponent, ....., who has duly qualified and is now acting as such.

That hereto annexed and marked Schedule "A" is a list of all the property, real or personal, of which said decedent died seised or possessed, including any interest accrued thereon at date of death.

That hereto annexed and marked Schedule "B" and made a part hereof is an itemized list of all the debts of said decedent which were due and owing at the time of death, funeral and administration expenses, and commissions of the executor.

That hereto annexed and marked Schedule "C" is a true copy of the last will and testament of said decedent.

That hereto annexed and marked Schedule "D" is a list of the beneficiaries under the last will and testament, with their addresses and the share of the estate received by them.

That all the parties in interest, namely, those persons mentioned in Schedule "D" are alive, of full age and sound mind, except:

.....  
 .....  
 .....

Your petitioner therefore prays the Surrogate to enter an order herein exempting from tax under the act in relation

to taxable transfers of property the property referred to in this petition.

(See note attached to "petition for order fixing tax without appointment of appraiser" for further averments.)

### § 360. Order Exempting Estate.

At a Surrogate's Court, held in and for the County of .....  
....., at the County Courthouse, in the .....  
of ....., on the ..... day of ....., 19...

Present: Hon. ...., Surrogate.

In the Matter of the Transfer Tax }  
Upon the Estate of }  
....., }  
Deceased. }

Upon reading and filing the petition of ....., duly verified on the ..... day of ....., wherein it appears that the transfer of the property of said decedent is not subject to tax under the act relating to taxable transfers of property, and upon due notice of motion having been given to ....., Esq., attorney for the State Controller, now on motion of ....., Esq., attorney for the petitioner herein, it is

Ordered and Adjudged that the transfer of property of which said decedent died seised and possessed and referred to in said petition is exempt from tax under the act in relation to taxable transfers of property.

### § 361. Order Remitting Report to Appraiser.

At a Surrogate's Court, held in and for the County of .....  
....., at the County Courthouse, in the .....  
of ....., on the ..... day of ....., 19...

Present: Hon. ...., Surrogate.

In the Matter of the Transfer Tax }  
Upon the Estate of }  
....., }  
Deceased. }

Upon reading and filing the annexed consent of ....., Esq., attorney for the State Controller, and ....., Esq., attorney for the ....., and upon the affidavit of ....., dated the ..... day of ....., it is

Ordered and Adjudged that the report of the appraiser duly filed herein on the ..... day of ....., be remitted to him for further consideration and report as to.....

### § 362. Composition Agreement.

Surrogate's Court, ..... County.

In the Matter of the Appraisal  
Under the Act in Relation to  
Taxable Transfers of Property of  
the Estate of  
.....  
Deceased.

Whereas it appears from the report in the above-entitled proceeding of ....., Esq., the appraiser duly appointed herein to appraise the property of the said ....., late of ....., deceased, which report bears date the ..... day of ....., ....., with reference to certain interests in remainder created by the last will and testament of decedent in the following terms:

.....  
.....  
.....

Whereas it further appears by said report that "As it is impossible now to determine to whom the aforesaid remainders after the foregoing life estates will eventually pass on the death of the life tenants, the same are not at present taxable" and that the State Superintendent of Insurance has ascertained and determined the aggregate value of the said remainder interests to be \$....., and

Whereas (.....,) the executor of the said estate, is desirous of personally settling all claims of the people of the State of New York, upon, or in respect to said property and estate, or any part thereof, for any transfer tax which may now be due and payable or which may hereafter become payable under the Laws of the State of New York and of compounding all such taxes payable upon said remainder interests, upon terms which are equitable and expedient as by law in that case made and provided.

Now therefore it is hereby stipulated and agreed upon the facts and circumstances aforesaid, and in consideration of the premises, that the transfer tax payable in respect to said remainders be and the same hereby is ascertained, fixed, compounded and adjusted at the sum of \$....., which sum

shall be accepted by the Honorable ....., as Controller of the State of New York, by and with the approval of the Honorable ....., Attorney General of the State of New York, in full payment, satisfaction and discharge of all transfer taxes which are payable, or which but for this agreement may at any time hereafter become due and payable to the State of New York, under or by virtue of the Laws of the State of New York, upon, or in respect to the property and estate of ....., deceased, or any part thereof, or upon and in respect to any and all interests therein, or in respect to the transfer thereof or by virtue of the said Will.

In witness whereof the said ....., executor of the estate of ....., deceased, and Hon. ...., Controller of the State of New York, have signed and acknowledged these presents in triplicate on the ..... day of ....., one thousand nine hundred and .....

Approved.

.....,  
Attorney General.

.....,

State of ....., }  
County of ..... } ss.:

On this ..... day of ....., one thousand nine hundred and ....., before me personally came ....., to me known and known to me to be the executor of the estate of ....., deceased, and who executed the foregoing instrument and he thereupon duly acknowledged to me that he executed the same.

State of New York, }  
County of ..... } ss.:

On this ..... day of ....., one thousand nine hundred and ....., before me personally came, Hon. ...., to me known and known to me to be the Controller of the State of New York, and who executed the foregoing instrument and he thereupon duly acknowledged to me that he executed the same.

**§ 363. Waivers of Notice by Controller.**

Dear Sirs:—

Re Estate of .....

The Controller of the State of New York hereby waives the issuance of the ten days' notice, required by Section 228 of the Taxable Transfers Law, for the opening of the safe deposit box in your custody belonging to this estate, and further consents to the transfer of any securities, or other property found therein, to the representatives of said decedent.

Very truly yours,

.....,

Attorney for State Controller.

Dear Sirs:—

Re Estate of .....

The Controller of the State of New York hereby waives the issuance of the ten days' notice, required by Section 228 of the Taxable Transfers Law, and further consents to the transfer, by you, to the representatives of this estate, of the following personal property, now standing on your books in the name of decedent:

.....  
 .....  
 .....

Very truly yours,

.....,

Attorney for State Controller.

**§ 364. Affidavits for Appraisal of Nonresident's Estate.**

Surrogate's Court, ..... County.

In the Matter of the Transfer Tax }  
 Upon the Estate of }  
 ..... }  
 Deceased. }

State of ..... }  
 County of ..... } ss.:

....., being duly sworn, deposes and says:

I. That ..he resides at .....

II. That said decedent died on the ..... day of  
 ....., 19..., intestate, and that thereafter deponent

was appointed administra... by the ..... Court of the County of ....., State of ....., on the ..... day of ....., 19...

III. That deponent duly qualified and is now acting as administra.... of this estate.

IV. That hereto annexed and made a part hereof is an itemized statement marked "A," of all the property, real and personal, of which said decedent died seised and possessed, situated within the State of New York, and an itemized statement, marked "B," of all the personal property situated without the State of New York.

V. That at the time of h... death, decedent had no safe deposit box, no bonds, public or private, no mortgages and no money within the State of New York; ..he had no interest in any business or copartnership carried on therein; ..he owned no shares of stock in National banks situated therein and owned no shares of stock in corporations organized and existing under the laws of the State of New York; ..he owned no jewelry, horses, carriages or furniture; and was possessed of no other personal property of any kind whatsoever in said state except as set forth in said schedule "A."

VI. That the decedent at the time of h.. death owned no real estate situated within the State of New York.

VII. That prior to h.. death, decedent made no transfer of property in the State of New York by deed, grant, bargain, sale, or gift in contemplation of death or intended to take effect at or after death; that the decedent had no power of appointment over property, real or personal, located therein.

VIII. That the fair market value of the entire personal estate of said decedent at the time of h.. death wheresoever situated, was the sum of \$.....

That the funeral expenses of said decedent amounted to the sum of \$.....

That the debts itemized in a statement hereto annexed, marked "C," due and owing by decedent at the time of h.. death, exclusive of funeral expenses, mortgages on real estate, inheritance taxes paid to the United States Government or to any Foreign or State Government or loans secured by collateral, amount to the sum of \$.....

That the administration expenses incurred, and to be incurred, exclusive of expenses in the preceding paragraphs amount to the sum of \$.....



That the commissions allowed me as administra....  
amount to the sum of \$.....

IX. That all the parties in interest are alive, of full age and sound mind, unless otherwise stated in the following paragraph:

X. That all the persons who are entitled to share in the estate of said decedent, their addresses, ages, the amount of their shares and their relationship to decedent, are as follows:

NAME AND RELATIONSHIP.	Age.	Address.	Share (per cent).
.....	.....	.....	.....

Sworn to before me, this ..... day of ....., 19...

(Attach County Clerk's certificate.)

Surrogate's Court, ..... County.

In the Matter of the Transfer Tax }  
Upon the Estate of }  
..... }  
Deceased.

State of ..... } ss.:  
County of ..... }

....., being duly sworn, deposes and says:

I. That ..he resides at .....

II. That said decedent died on the ..... day of ....., a resident of ....., State of ....., leaving a last will and testament, which was duly admitted to probate by the ....., State of ....., on the ..... day of .....

III. That deponent was appointed <sup>sole</sup> executor of said will, has duly qualified and is now acting as such executor.

IV. That hereto annexed and made a part hereof is an itemized statement marked "A," of all the property, real and personal, of which said decedent died seised and possessed, situated within the State of New York, and an

itemized statement, marked "B," of all the personal property situated without the State of New York.

V. That at the time of his death, decedent had no safe deposit box, no bonds, public or private, no mortgages and no money within the State of New York; he had no interest in any business or copartnership carried on therein; he owned no shares of stock in national banks situated therein and owned no shares of stock in corporations organized and existing under the laws of the State of New York; he owned no jewelry, horses, carriages or furniture; and was possessed of no other personal property of any kind whatsoever in said State except as set forth in said schedule "A."

VI. That the decedent at the time of his death owned no real estate situated within the State of New York.

VII. That prior to his death, decedent made no transfer of property in the State of New York by deed, grant, bargain, sale or gift in contemplation of death, or intended to take effect at or after death; that decedent had no power of appointment over property, real or personal, located therein.

VIII. That the fair market value of the entire personal estate of said decedent at the time of his death wheresoever situated was the sum of \$.....

That the funeral expenses of said decedent amounted to the sum of \$.....

That the debts itemized in a statement hereto annexed, marked "C," due and owing by decedent at the time of his death, exclusive of funeral expenses, mortgages on real estate, inheritance taxes paid to the United States Government, or to any Foreign or State Government, or loans secured by collateral, amount to the sum of \$.....

That the administration expenses incurred and to be incurred, exclusive of expenses in the preceding paragraphs, amount to the sum of \$.....

That the commissions allowed me as executor amount to the sum of \$.....

IX. That annexed hereto, marked schedule "D" and made a part hereof is a true copy of said decedent's last will and testament.

X. That all the parties in interest are alive, of full age and sound mind, unless otherwise stated in the following paragraph.

XI. ....

Sworn to before me, this ..... day of ....., 19...

.....,  
.....,

(Attach County Clerk's certificate.)

**§ 365. Memorandum Used by Appraisers of New York County for Preparation of Affidavits.**

In appraisal proceedings, affidavits should embody the following facts, and should state each in detail:

1. Date of death.
2. Residence at time of death.
3. Did decedent leave a will? If so, annex a certified copy, or swear that the annexed is a true copy. Also state when and where said will was probated, and date when letters were issued, and to whom.
4. Name and address of executors or administrators.
5. Personal property itemized, setting forth par and market value of each item at date of decedent's death, and how the value thereof was ascertained.

State specifically whether decedent died possessed of any silverware, jewelry, household furniture, personal effects, statuary, works of art, paintings, pictures, books, bric-a-brac, etc.

If assets include stocks or bonds, state details, as per example:

100 shares Erie R. R. common stock, par value 100, 12¾ .....	\$1,275 00
100 shares Erie R. R. preferred stock, par value 100, 37¾ .....	3,775 00
100 shares Erie R. R. 2d preferred stock par value 100, at 19½ .....	1,950 00
One \$1,000 bond Chicago & Northwestern, consolidated, 7's, due 1915, at 137½ .....	1,375 00
One \$1,000 bond Chicago & Northwestern, gold, 7's, due 1902, at 109 .....	1,090 00
One \$1,000 bond Chicago & Northwestern Extension, 4's, due 1926, at 108½ .....	1,085 00
One \$1,000 bond Chicago & Northwestern Sinking Fund, 6's, due 1929, at 118 .....	1,180 00

In addition, if securities are unlisted, state capitalization, kind of business, itemized statement as to assets, values thereof, itemized statement of liabilities, dividends paid, and date of maturity, with such other facts as may be

pertinent, affecting their value, as of date of decedent's death.

State whether decedent died possessed of mortgages or promissory notes or had any interest accrued thereon and unpaid at date of decedent's death.

State whether there are any claims or unlisted securities which are alleged to be of less than their face value, and state particularly, and in detail, the reasons for their depreciation.

State whether decedent left any real estate in the State of New York. If same is taxable, describe it in detail, with street and number, City and County; give its full value and assessed value, and furnish an appraisal thereof by a competent real estate expert.

State relationship of decedent to beneficiaries.

State exemptions claimed and itemize same.

If there is a life estate, give name and age of life tenant, and name of remainderman.

State whether any party in interest be dead; whether he died before or after the decedent, and give name of his survivors if they are interested.

State whether decedent made any transfer or conveyance of real or personal property prior to death, in contemplation of death, to take effect at or after death. If yes, what property, and of what value.

State whether deponent has made diligent search for property of every kind, nature and description, left by the decedent, and that he has been able to discover only that mentioned in his affidavit, and that he verily believes that decedent left no property, either real or personal, except that set forth in his affidavit.

If debts and funeral expenses are requested to be deducted, itemize the same and state whether said debts were due and owing at the date of death of the decedent, and have been paid or will be paid.

Kindly file a statement of the amount of each legacy and distributive share, with the names of the beneficiaries.

State whether all parties in interest are of full age and of sound mind, and if there are infants, state their names and whether they are under or over fourteen years of age.

State whether decedent had any life insurance, interest in any business, or in any estate, and if so, state the same fully and in detail.

State whether any reversion fell in by reason of decedent's death.

If decedent left any interest in any copartnership or any business, state fully, in itemized form, the assets of the same and the liabilities thereof, as shown by the books for several years preceding his death.

If the decedent be a nonresident, state, in itemized form, the value of the personal and real property within the State of New York, and if the decedent owned any shares of stock of corporations of the State of New York and the gross value of the entire personal estate wherever situated.

State whether the decedent was a member of any Exchange.

State whether decedent was given power of disposition of property by the will of another.

**§ 366. District Attorney Proceedings—Petition for Citation.**

Surrogate's Court, ..... County.

In the Matter of the Transfer Tax  
Upon the Estate of  
.....  
Deceased. }

To the Surrogate's Court of the County of .....

The petition of ..... of the City of ..... respectfully shows:

I. That your petitioner is the District Attorney of the County of .....

Your petitioner further alleges upon information and belief:

II. That on or about the ..... day of ....., at the City of ....., died and was at the time of ..... death a resident of the ..... of ..... and County of .....

III. (State status of transfer tax proceeding had, if any.)

IV. The said decedent died seised or possessed of property within this State, or subject to its laws, the value of which exceeded the sum of .....

V. That upon h.. death certain of the property of said decedent thereupon passed to .....

VI. That the property so passing, or some part thereof, is subject to taxation under Chapter 908 of the Laws of 19..., and the acts amendatory thereof and supplemental thereto.

VII. Your petitioner further shows that the Controller of the State of New York has notified your petitioner in writing of the refusal or neglect of the persons liable therefor to pay the said tax, and that no part of said tax has been paid, and your petitioner has probable cause to believe that the same still remains due and unpaid.

Wherefore your petitioner prays that a citation issue herein to ..... citing ..... to appear before this Court on a day to be designated therein, and show cause why the tax under the act aforesaid should not be paid and said property be appraised if necessary for that purpose.

Dated the ..... day of .....

District Attorney of the County of .....

State of New York, }  
County of ..... } ss.:

....., being duly sworn, says that he has read the foregoing petition and knows the contents thereof, and that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Sworn to before me, this ..... day of .....

.....,  
Notary Public,  
..... County.

**§ 367. District Attorney Proceedings—Order for Citation.**

At a Surrogate's Court, held in and for the County of  
 ....., at the Surrogate's Office in the County of  
 ....., on the .... day of ....., 19....

Present: Hon. ...., Surrogate.

In the Matter of the Transfer Tax }  
 Upon the Estate of }  
 ....., }  
 Deceased. }

On reading and filing the petition of ....., District  
 Attorney of the County of ....., verified the .....  
 day of ..... , 19...., it is

Ordered that a Citation issue herein in accordance with  
 the prayer of said petition.

.....,  
 Surrogate.

**§ 368. District Attorney Proceedings—Citation.**

The People of the State of New York,

By the grace of God, free and independent, to .....  
 .....  
 .....  
 .....

You and each of you are hereby cited and required personally to be and appear before our Surrogate of the County of ..... at the Surrogate's Court of said County, held at the County Courthouse in the County of ..... on the ..... day of ....., 19...., at half-past ten o'clock in the forenoon of that day, then and there to show cause why the transfer tax provided for by Chapter 908 of the Laws of 19... of the State of New York and the acts amendatory thereof and supplementary thereto should not be paid on property passing upon the death of ..... and why such property should not be appraised according to law, if necessary for that purpose.

And such of you hereby cited as are under the age of twenty-one years are required to appear by your guardian if you have one, or if you have none, to appear and apply for one to be appointed, or in the event of your neglect or failure to do so, a guardian will be appointed by the Surrogate to represent and act for you in the proceeding.

In testimony whereof, we have caused the seal of the Surrogate's Court of the County of ....., to be hereunto affixed.

Witness, Hon. ....

Surrogate of our said County at the City of .....,  
the ..... day of ....., in the year of our Lord one  
thousand nine hundred and .....

.....,  
Clerk of the Surrogate's Court.

**§ 369. District Attorney Proceedings—Order Appointing Appraiser.**

At a Surrogate's Court, held in and for the County of  
....., at the Surrogate's Office in the County of  
....., on the ..... day of ....., 19...

Present: Hon. ...., Surrogate.

In the Matter of the Transfer Tax }  
Upon the Estate of }  
..... }  
Deceased. }

On reading and filing the petition of ....., District Attorney of the County of ....., and the order for and citation issued thereon, with due proof of service thereof and on the return day thereof the said proceeding having been marked for an order designating an Appraiser, I do hereby, pursuant to the requirement of Chapter 658 of the Laws of 19.., direct .... to fix the fair market value at the time of the transfer of the property which was of the above-named decedent and which is subject to the payment of any tax imposed by Article X, Chapter 908, Laws of 19.., and the Acts amendatory thereof and supplemental thereto.

.....,  
Surrogate.



**§ 370. District Attorney Proceedings—Decree Fixing Tax, Directing Payment, etc.**

At a Surrogate's Court, held in and for the County of .....  
 at the County Courthouse, in the .....  
 of ....., on the ..... day of ....., 19:..

Present: Hon. ...., Surrogate.

In the Matter of the Transfer Tax }  
 Upon the Estate of }  
 ..... }  
 Deceased.

Upon reading and filing the report of ....., Esq., the appraiser herein, and after hearing ....., on behalf of Hon. ...., District Attorney, in support of said report, and ....., of counsel for the ..... herein, in opposition, it is

Ordered: 1st—That the cash value of the property referred to in said report, which is subject to the tax imposed by the Act relating to taxable transfers, and the tax to which the said transfers are liable, is as follows:

BENEFICIARY.	Cash value of interest.	Tax assessed thereon.
.....	.....	.....

2d—That ..... the ..... herein, make payment to the Controller of the State of New York of the sum of ....., \$. .... being the amount of the tax upon the interest .. of said .....  
 .....  
 .....  
 ..... together with interest upon each of said sums respectively, at the rate of ..... per centum per annum, from the ..... day of ..... ., 19... , to the date of payment.

And it is further ordered, That said ..... pay to Hon. ...., District Attorney, the sum of ..... dollars, as and for his costs and disbursements herein.

## CHAPTER XXIII.

## ARKANSAS STATUTE.

(*Acts of 1901, pp. 295-299; Kirby's Digest, pp. 242-244; Acts of 1907, pp. 832-834; Acts of 1909, pp. 904-910.*)

- § 400. Transfers Subject to Tax.
- § 401. Persons Liable for Tax—Lien—Interest—Payment.
- § 402. Rate of Taxation in Case of Lineal Descendants.
- § 403. Rate of Taxation in Case of Collateral Relatives.
- § 404. Rate of Taxation in Other Cases.
- § 405. Estates for Years or Life—Remainders.
- § 406. Bequests to Executors in Lieu of Compensation.
- § 407. Time for Payment—Interest.
- § 408. Inventory—Collection of Tax.
- § 409. Legacies Charged upon Real Estate—Collection of Tax.
- § 410. Valuation and Appraisement of Property.
- § 411. Jurisdiction of Probate Court.
- § 412. Account of Executor not Settled Until Tax Paid.
- § 413. Duty of Attorney General—Appointment and Compensation of Attorneys.
- § 414. Repeal of Conflicting Acts.

§ 400. Transfers Subject to Tax.

Sec. 1. All property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, or whether tangible or intangible, which shall pass by will or by the intestate laws of this state, or by deed, grant, sale or gift made or intended to take effect in possession after the death of the grantor to any person or corporation in trust or otherwise, shall be liable to tax for the use of the state at the rate hereinafter specified. (*Acts of 1909, p. 905.*)

§ 401. Persons Liable for Tax—Lien—Interest—Payment.

Sec. 2. All executors, administrators and other trustees, and all heirs or beneficiaries taking under a will or by virtue of the intestate laws, and any such grantee under conveyance made during life of the grantor, shall be liable for all such taxes, with interest, until the same shall have been paid as herein provided. And said tax shall be and continue a lien upon the property chargeable therewith until paid to the state; provided, that all inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise, they shall be presumed to be paid and cease to be a lien as against any purchasers of real estate. (*Acts of 1909, p. 906.*)

§ 402. Rate of Taxation in Case of Lineal Descendants.

Sec. 3. When the property or any interest therein shall pass to a grandfather, grandmother, father, mother, husband, wife, lineal descendant,

brother, sister, or any adopted child, in every such case the rate of tax shall be one dollar on every hundred dollars of the clear market value of such property received; provided, that any estate which may be valued at a less sum than five thousand (\$5,000.00) dollars shall not be subject to any tax, the excess over such sum only being taxed. (Acts of 1909, p. 906.)

**§ 403. Rate of Taxation in Case of Collateral Relatives.**

Sec. 4. When the property or any interest therein shall pass to any uncle, aunt, niece, nephew, or any lineal descendant of the same, in every such case the rate of tax shall be two dollars on every one hundred dollars of the clear market value of such property received, in excess of the sum of \$2,000.00. (Acts of 1909, p. 906.)

**§ 404. Rate of Taxation in Other Cases.**

Sec. 5. In all other cases the rate shall be as follows: On each and every one hundred dollars of the clear market value of all property and at the same rate for any less amount, on all estates of \$10,000 and less, \$3.00; on \$5.00; on all estates exceeding \$50,000.00, \$6.00. Provided, that an estate of not exceeding \$1,000.00 in value shall not be subject to tax. (Acts of 1909, p. 906.)

**§ 405. Estates for Years or Life—Remainders.**

Sec. 6. When any person shall bequeath or devise any property to or for the use of grandfather, grandmother, father, mother, husband, wife, lineal descendant, brother, sister or any child thereof, an adopted child or any heir of an adopted child, or any lineal descendant thereof, during life or for a term of years, and remainder to another, the value of the prior estate shall within sixty days after the death of the testator, be appraised in the manner hereinafter provided and shall be taxable as provided in the preceding sections; and the inheritance tax on the remainder of the estate shall be held in abeyance until the beneficiary shall come into possession of same, and shall thereupon likewise be taxable as therein provided. (Acts of 1909, p. 906.)

**§ 406. Bequests to Executors in Lieu of Compensation.**

Sec. 7. Whenever a decedent appoints one or more executors or trustees and in lieu of their allowance makes a devise or bequest of property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises or residuary legacies, exceed what would be a reasonable compensation for their services, such excess shall be liable to such tax, and the court of probate having jurisdiction of their accounts shall fix the amount of such compensation. (Acts of 1909, p. 907.)

**§ 407. Time for Payment—Interest.**

Sec. 8. All taxes imposed by this Act shall be due and payable to the treasurer of the state by the executors, administrators, trustees, heirs or beneficiaries, at the death of the decedent, and if paid within twelve months

no interest shall be charged and collected thereon, but if not paid interest at the rate of nine per cent per annum shall be charged and collected from the time said tax became due. (Acts of 1909, p. 907.)

**§ 408. Inventory—Collection of Tax.**

Sec. 9. It shall be the duty of every administrator, executor or trustee having in charge or trust any property subject to said tax to file in the probate court of the county of the decedent's death in addition to the inventory of personal property now required, a true inventory of the real estate owned by the decedent at the date of his death, and to collect the tax thereon from the devisee or person entitled to said property; and he shall not deliver any specific legacy or property subject to said tax to any person until he has collected the tax thereon. (Acts of 1909, p. 907.)

**§ 409. Legacies Charged upon Real Estate—Collection of Tax.**

Sec. 10. Whenever any legacies subject to said tax shall be charged upon or payable out of any real estate, the heir or devisee, before paying the same shall deduct said tax therefrom and pay it to the executor, administrator or trustee, and the same shall remain a charge upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator or trustee in the same manner as the payment of the legacy itself could be enforced. If any such legacy be given in money to any person for a limited period, such administrator, executor or trustee shall retain the tax on the whole amount; but if it be not in money, he shall make an application to the court having jurisdiction of his accounts to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatee on account of said tax and for such further order as the case may require. (Acts of 1909, p. 907.)

**§ 410. Valuation and Appraisement of Property.**

Sec. 11. The value of such property as may be subject to said tax shall be its actual value as found by the court of probate, after notice to all persons interested in the succession to said property [shall be] served for the time and in the manner required by law in proceedings for the assignment of dower. But the state treasurer, or any person interested in the succession to said property, may apply to the court of probate having jurisdiction of the estate, or to any circuit court having jurisdiction in case there is no administration, and on such application said court shall appoint three disinterested persons who, being first sworn, shall view and appraise such property at its actual market value for the purposes of said tax, and shall make return thereof to the court, which return may be accepted by the said court, and if accepted shall be binding. And the fees of the appraiser shall be such as are customary in the administration of estates. In the case of annuity or life estate the value thereof shall be determined by the tables of mortality employed by insurance actuaries, and five per centum compound interest. (Acts of 1909, p. 908.)

**§ 411. Jurisdiction of Probate Court.**

Sec. 12. The court of probate having either principal or auxiliary jurisdiction of the settlement of the estate of a decedent shall have jurisdiction to hear and determine all questions in relation to said tax that may arise affecting any devise, legacy or inheritance under this act, subject to appeal as in other cases, and the state treasurer, through the attorney general, shall represent the interests of the state in any such proceedings. (Acts of 1909, p. 909.)

**§ 412. Account of Executor not Settled Until Tax Paid.**

Sec. 13. No final settlement of the account of any executor, administrator or trustee shall be confirmed by any probate court unless it shall show and the court shall find that all taxes imposed by the provisions of this act upon any property or interest therein belonging to the estate to be settled by said account shall have been paid, and the receipt of the treasurer of the state for such tax shall be the proper voucher for such payment. (Acts of 1909, p. 909.)

**§ 413. Duty of Attorney General—Appointment and Compensation of Attorneys.**

Sec. 14. It shall be the duty of the attorney general to appear for or in behalf of the state treasury, and institute proceedings in the proper form for the enforcement of the provisions of this act, whenever, from information by the state treasurer, or from any probate judge, or otherwise obtained, he shall have reason to believe any of the taxes provided for herein have become past due. And when requested in writing by any probate judge, he shall assist in the adjustment and collection of any such taxes which shall have accrued under this act, and whenever, in the judgment of the attorney general it becomes necessary and expedient, he shall have the power to appoint attorneys to assist him in any of the duties herein required of him, and the compensation of such attorneys shall be two per cent of all amounts actually collected, except where there may be litigation over past due taxes, in which event the compensation shall be five per cent of all amounts actually recovered, said compensation to be deducted from the amount of taxes so collected. Provided, that any attorney appointed hereunder shall be a resident of the congressional district in which such action for the collection of inheritance tax may be brought or in which the administration of any estate liable therefor may be pending. (Acts of 1909, p. 909.)

**§ 414. Repeal of Conflicting Acts.**

Sec. 15. That all laws and parts of laws in conflict herewith be and the same are hereby repealed, and that this act take effect and be in force from and after its passage. (Acts of 1909, p. 910, approved May 31, 1909.)

## CHAPTER XXIV.

### CALIFORNIA STATUTE.

*(Statutes of 1905, pp. 341, 374; Statutes of 1909, p. 557; Statutes of 1911, pp. 713-727.)*

- § 415. Transfers Subject to Tax—Lien—Persons Liable—Market Value—Power of Appointment.
- § 416. Classification of Beneficiaries—Tax Rates on Estates Under \$25,000.
- § 417. Rates of Taxation on Estates Over \$25,000.
- § 418. Exemptions from Taxation.
- § 419. Estates for Years or Life—Remainders and Contingent Interests.
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- § 415. Transfers Subject to Tax—Lien—Persons Liable—Market Value—Power of Appointment.

Sec. 1. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom, in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted, to be paid to the treasurer of the proper county, as hereinafter directed, for the use of the state, in the following cases:

(1) When the transfer is by will or by the intestate or homestead laws of this state, from any person dying seised or possessed of the property while a resident of the state, or by any probate homestead set apart from said property.

(2) When the transfer is by will or intestate laws of property within the state and the decedent was a nonresident of the state at the time of his death.

(3) When the transfer is of property made by a resident, or by a non-resident when such nonresident's property is within this state, by deed, grant, bargain, sale, assignment or gift, made without valuable and adequate consideration in contemplation of the death of the grantor, vendor, assignor or donor, or intended to take effect in possession or enjoyment at or after such death. When any such person, institution or corporation becomes beneficially entitled in possession or expectancy to any property or the income therefrom, by any such transfer, whether made before or after the passage of this act.

(4) Such taxes shall be and remain a lien upon the property passed or transferred until paid, and the person to whom the property passes or is transferred, and all administrators, executors, and trustees of every estate so transferred or passed, shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed; provided, that unless sued for within five years after they are due and legally demandable, such taxes shall cease to be a lien as against any bona fide purchaser of real property; and provided that no such lien shall cease within five years from the date of the passage of this act. The tax so imposed shall be upon the market value of such property at the rates hereinafter prescribed and only upon the excess over the exemptions hereinafter granted.

Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure. (Stats. 1905, p. 341; Stats. 1911, p. 713.)

**§ 416. Classification of Beneficiaries—Tax Rates on Estates Under \$25,000.**

Sec. 2. When the property or any beneficial interest therein so passed or transferred exceeds in value the exemption hereinafter specified and shall not exceed in value twenty-five thousand dollars the tax hereby imposed shall be:

(1) Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal issue, lineal ancestor of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent,

provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per centum of the clear value of such interest in such property.

(2) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife or widow of a son, or the husband of a daughter of the decedent, at the rate of two per centum of the clear value of such interest in such property.

(3) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother or a descendant of a brother or sister of the father or mother of the decedent, at the rate of three per centum of the clear value of such interest in such property.

(4) Where the person or persons entitled to any beneficial interests in such property shall be the brother or sister of the grandfather or grandmother or a descendant of the brother or sister of the grandfather or grandmother of the decedent, at the rate of four per centum of the clear value of such interest in such property.

(5) Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear value of such interest in such property. (Stats. 1905, p. 342; Stats. 1911, p. 714.)

#### § 417. Rates of Taxation on Estates Over \$25,000.

Sec. 3. The foregoing rates in section two are for convenience termed the primary rates. When the market value of such property or interest exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(1) Upon all in excess of \$25,000 and up to \$50,000, two times the primary rates.

(2) Upon all in excess of \$50,000 and up to \$100,000, three times the primary rates.

(3) Upon all in excess of \$100,000 and up to \$500,000, four times the primary rates.

(4) Upon all in excess of \$500,000, five times the primary rates. (Stats. 1905, p. 342; Stats. 1911, p. 714.)

#### § 418. Exemptions from Taxation.

Sec. 4. The following exemptions from the tax are hereby allowed:

(1) All property transferred to societies, corporations, and institutions now or hereafter exempted by law from taxation, or to any public corporation, or to any society, corporation, institution, or association of persons engaged in or devoted to any charitable, benevolent, educational, public or other like work (pecuniary profit not being its object or purpose), or to any person, society, corporation, institution, or association of persons in trust



for or to be devoted to any charitable, benevolent, educational, or public purpose, by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income thereof shall be exempt.

(2) Property of the clear value of twenty-four thousand dollars transferred to the widow or to a minor child of the decedent, and of ten thousand dollars transferred to each of the other persons described in the first subdivision of section 2 shall be exempt.

(3) Property of the clear value of two thousand dollars transferred to each of the persons described in the second subdivision of section 2 shall be exempt.

(4) Property of the clear value of one thousand five hundred dollars transferred to each of the persons described in the third subdivision of section 2 shall be exempt.

(5) Property of the clear value of one thousand dollars transferred to each of the persons described in the fourth subdivision of section 2 shall be exempt.

(6) Property of the clear value of five hundred dollars transferred to each of the persons and corporations described in the fifth subdivision of section 2 shall be exempt. (Stats. 1905, p. 343; Stats. 1911, p. 715.)

**§ 419. Estates for Years or Life—Remainders and Contingent Interests.**

Sec. 5. When any grant, gift, legacy, devise or succession upon which a tax is imposed by section one of this act shall be an estate, income or interest for a term of years, or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent, and the market value thereof determined, in the manner provided in section fifteen of this act, and the tax prescribed by this act shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid; provided, that the person or persons, or body politic or corporate, beneficially interested in the property chargeable with said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case such person or persons, or body politic or corporate, shall execute a bond to the people of the state of California, in a penalty of twice the amount of the tax arising upon personal estate, with such sureties as the said superior court may approve, conditioned for the payment of said tax, and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the county clerk of the proper county and a certified copy thereof shall be immediately transmitted to the state controller; provided further, that such person shall make a full and verified return of such property to said court, and file the same in the office of the county clerk within one year from the death of the decedent, and within that period enter into such security, and renew the same every five years. (Stats. 1905, p. 343; Stats. 1911, p. 716.)

**§ 420. Bequests to Executor in Lieu of Compensation.**

Sec. 6. Whenever a decedent appoints or names one or more executors or trustees, and makes a bequest or devise of property to them in lieu of commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequest, devises, or residuary legacies exceed what would be a reasonable compensation for their services, such excess over and above the exemptions herein provided for shall be liable to said tax; and the superior court in which the probate proceedings are pending shall fix the compensation. (Stats. 1905, p. 343; Stats. 1911, p. 716.)

**§ 421. Time for Payment of Tax—Interest and Discount.**

Sec. 7. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and if the same are paid within eighteen months no interest shall be charged and collected thereon, but if not so paid, interest at the rate of ten per centum per annum shall be charged and collected from the time said tax accrued; provided, that if said tax is paid within six months from the accruing thereof a discount of five per centum shall be allowed and deducted from said tax. And in all cases where the executors, administrators, or trustees do not pay such tax within eighteen months from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section five of this act for the payment of said tax, together with interest. (Stats. 1905, p. 344; Stats. 1911, p. 716.)

**§ 422. Penalty for Nonpayment.**

Sec. 8. The penalty of ten per cent per annum imposed by section seven hereof, for the nonpayment of said tax, shall not be charged in cases where, in the judgment of the court, by reason of claims made upon the estate, necessary litigation, or other unavoidable cause of delay, the estate of any decedent, or a part thereof, cannot be settled at the end of eighteen months from the death of the decedent; and in such cases seven per cent per annum shall be charged upon the said tax from the expiration of said eighteen months until the cause of such delay is removed, after which ten per cent interest per annum shall again be charged until the tax is paid; but litigation to defeat the payment of the tax shall not be considered necessary litigation. (Stats. 1905, p. 344; Stats. 1911, p. 717.)

**§ 423. Collection of Tax by Executor or Trustee.**

Sec. 9. Any administrator, executor, or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator, or trustee shall collect said tax from the distributees thereof, and the same shall

remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator, or trustee shall retain the tax upon the whole amount; but if it be not in money he shall make application to the superior court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require. (Stats. 1905, p. 345; Stats. 1911, p. 717.)

**§ 424. Sale of Property to Pay Tax.**

Sec. 10. All executors, administrators, and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of debts of the estate, and the amount of said tax shall be paid as hereinafter directed. (Stats. 1905, p. 345; Stats. 1911, p. 717.)

**§ 425. Payment to County Treasurer—Duty of Controller—Receipts.**

Sec. 11. Every sum of money retained by an executor, administrator, or trustee, or paid into his hands, for any tax on property, shall be paid by him, within thirty days thereafter, to the treasurer of the county in which the probate proceedings are pending. Upon the payment to any county treasurer of any tax due under this act, such treasurer shall issue a receipt therefor in triplicate, one copy of which he shall deliver to the person paying said tax, and the original and one copy thereof he shall immediately send to the controller of the state, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and said controller shall retain one of said receipts and the other he shall countersign and seal with the seal of his office, and immediately transmit to the clerk of the court fixing such tax. And an executor, administrator, or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed, unless a receipt so sealed and countersigned by the controller, or a copy thereof, certified by him, shall have been filed with the court.

Any person shall, upon payment to the county treasurer of the sum of fifty cents, be entitled to a duplicate, or copy, of any receipt that may have been given by said treasurer for the payment of any tax under this act. (Stats. 1905, p. 345; Stats. 1911, pp. 717, 718.)

**§ 426. Refunding Excess Payments.**

Sec. 12. Whenever any debts shall be proven against the estate of a decedent after the payment of legacies or distribution of property from which the said tax has been deducted or upon which it has been paid, and a refund is made by the legatee, devisee, heir, or next of kin, a proportion of the tax so deducted or paid shall be repaid to him by the executor, administrator, or trustee, if the said tax has not been paid to the county treasurer or to the state treasurer, or by said county treasurer, or said state treasurer (on warrant of the state controller) if it has been so paid. (Stats. 1905, p. 345; Stats. 1911, p. 718.)

**§ 427. Transfer or Delivery of Stocks, Securities, Deposits—Notice.**

Sec. 13. If a foreign executor, administrator, or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or nonresident, or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint name of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the state controller and county treasurer at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this act, unless the state controller, or person by him in writing authorized so to do, consents thereto in writing. And it shall be lawful for the state controller or the county treasurer, personally or by representatives, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided, or violation of the provisions of this section, shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of not less than one thousand nor more than twenty thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in an action brought by the state controller or county treasurer in any court of competent jurisdiction. (Stats. 1905, p. 346; Stats. 1911, p. 718.)

**§ 428. Appraisers and Appraisalment.**

Sec. 14. The state controller shall appoint, and may at his pleasure remove, one or more persons in each county of the state to act as inheritance tax appraisers therein. Every such inheritance tax appraiser (in addition to any fees paid him as appraiser under section 1444 of the Code of Civil Procedure) shall be paid by the county treasurer, out of any funds that he may have in his hands on account of said tax, on presentation of a sworn itemized account and on the certificate of the superior court, at the rate of five dollars per day for every day actually and necessarily employed in said inheritance tax appraisalment, together with his actual and necessary traveling and other incidental expenses, and the fees paid such witnesses as he shall subpoena before him, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record. Any such appraiser who shall take any fee or reward, other than such as may be allowed him by law, from any executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars, or be imprisoned in the county jail ninety days, or both, and in addition thereto the court shall dismiss him from such service. (Stats. 1905, p. 347; Stats. 1911, p. 719.)

Sec. 15. (1) The superior court having jurisdiction to determine any such tax, either upon its own motion or upon the application of any interested person, including the state controller or county treasurer, shall by order direct the person, or one of the persons, appointed pursuant to section 14 of this act to fix the clear market value of property of persons whose estates shall be subject to the payment of any tax under this act. Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the state controller and the treasurer of the county in which such tax is to be paid, and to such person or persons as the superior court may by order direct, of the time and place when he will hear all persons interested in the appraisalment of such estate. He shall thereupon appraise the said property at its fair market value as herein prescribed; and for the purpose of making said appraisalment the said appraiser is hereby authorized to issue subpoenas and compel the attendance of witnesses before him, to administer oaths, and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing to the said superior court, together with the depositions of the witnesses examined, and such other facts in relation thereto as said superior court may order or require; and the value of every future or contingent or limited estate, income, or interest shall, for the purposes of this act, be determined by the rule, method, and standards of mortality and of value that are set forth in the actuaries' combined experience tables of mortality for ascertaining the value of policies of life insurance and annuities, and for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be five per centum per annum.

The insurance commissioner shall, on the application of any superior court, determine the value of any future or contingent estates, income or interest therein limited, contingent, dependent or determinable upon the life or lives of persons in being, upon the facts contained in any such appraiser's report, or other facts to him submitted by said court, and certify the same to the superior court, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct.

In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made on account of any contingent encumbrance thereon, nor on account of any contingency upon the happening of which the estate or property or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such encumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgment, defeat or diminution of said estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax on account of the encumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section twelve thereof upon order of the court having jurisdiction.

Where any property shall after the passage of this act, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interests is derived.

When property is transferred in trust or otherwise, and the rights, interest or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this act, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this act. Such return of overpayment shall be made in the manner provided by section twelve of this act, upon order of the court having jurisdiction.

Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

The report of the appraiser shall be made in duplicate, one of which duplicates shall be filed with the clerk of said court and the other in the office of the state controller.

(2) From such report of appraisal and other proof relating to any such estate, or property, before the superior court, said court shall, by order, forthwith assess and fix the market value of such property and the amount of tax to which the same is liable, and the clerk of said court shall immediately give notice thereof by mail to the county treasurer and the state controller and to all interested persons who shall have furnished said clerk with their names and addresses for the purpose of receiving such notice.

But said superior court may determine such tax or taxes without appointing an inheritance tax appraiser; provided, that in such determination, said court shall first fix a day upon which it will hear all parties interested in said property and in said tax, and said court shall order the clerk thereof to give notice of said hearing for such time, not less than ten days, and in such manner as said court shall direct, and said clerk shall at least ten days before said hearing mail a copy of such notice to the county treasurer and a copy to the state controller. (Stats. 1905, p. 347; Stats. 1911, p. 720.)

#### § 429. Jurisdiction of Courts.

Sec. 16. The superior court in the county in which is situate the real property of a decedent who was not a resident of the state, or if there be no real property, then in the county in which any of the personal property of such nonresident is situate, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the court first acquiring jurisdiction hereunder shall retain the same, to the exclusion of every other. (Stats. 1905, p. 347; Stats. 1911, p. 722.)

#### § 430. Citation to Delinquent Taxpayers.

Sec. 17. If it shall appear to the superior court upon petition of the state controller or the county treasurer or any other interested person that any transfer has been made within the meaning of this act and the taxability thereof and the liability for such tax and the amount thereof have not been determined, and that no proceedings are pending in any court in this state wherein the taxability of such transfer, the liability therefor and the

amount thereof may be determined, said court shall issue a citation, citing the persons who may appear liable therefor, or known to own any interest in or part of the property transferred, to appear before the court on a day certain, not more than ten weeks from the date of such citation, and show cause why said tax should not be determined and paid. The service of such citation, and the time, manner, and proof thereof, and the hearing and determination thereon, and the enforcement of the determination or decree, shall conform to the provisions of chapter XII of title XI of part three of the Code of Civil Procedure; and the clerk of the court shall, upon the request of the state controller or the treasurer of the county, furnish, without fee, one or more transcripts of such decree, and the same shall be docketed and filed by the county clerk of any county in the state, without fee, in the same manner and with the same effect as provided by section six hundred and seventy-four of said Code of Civil Procedure for filing a transcript of an original docket. The superior court may hear the said cause upon the relation of the parties and the testimony of witnesses, and evidence produced in open court, and, if the court shall find said property is not subject to any tax, as herein provided, the court shall, by order, so determine; but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases. (Stats. 1905, p. 348; Stats. 1911, p. 722.)

**§ 431. Actions to Enforce Tax and Lien—Quieting Title.**

Sec. 18. If, after the expiration of eighteen months from the accrual of any tax under this article, such tax shall remain due and unpaid, after the refusal or neglect of the persons liable therefor to pay the same, the county treasurer shall notify, or the state controller may notify, the district attorney of the county in writing of such failure or neglect, and such district attorney shall bring and prosecute an action or actions in the name of the state as plaintiff, for the recovery of such tax and for the purpose of enforcing any lien or liens against all or any of the property subject thereto. In any such action the owner of any property or of any interest in property against which the lien of any such tax is sought to be enforced, and any predecessor in interest of any such owner whose title or interest was de-raigned through any such decedent by will or succession or by decree of distribution of the estate of such decedent, and any lienor, or encumbrancer subsequent to the lien of such tax may be made a party defendant. The enumeration in this section of the persons who may be made defendants shall not be deemed to be exclusive, but the joinder or nonjoinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases.

(a) Actions may be brought against the state for the purpose of quieting the title to any property, against the lien or claim of lien of any tax or taxes under this act, or for the purpose of having it determined that any property is not subject to any lien for taxes under this act. In any such action, the plaintiffs may be any administrator or executor of the estate or will of any decedent, whether the said estate shall have been fully administered and the estate settled and closed or not, and any heir, legatee or



devisee of any such decedent, or trustee of the estate or of any part of the estate of such decedent, or distributee of the estate or of any part of the estate of any such decedent, and any assignee, grantee or successor in interest of any of such persons, and all or any other persons who might be made parties defendant in any action brought by the state under the provisions of this section, and notwithstanding that all or any of the persons enumerated in this section shall or may have assigned, granted, conveyed or otherwise parted with all or any interest in or title to the property, or any thereof, involved in any such claim of lien before the commencement of such action. All or any of the persons in this action enumerated may be joined or united as parties plaintiff. The enumeration in this section of the persons who may be made parties shall not be deemed to be exclusive, but the joinder or nonjoinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases. In all cases any person who might properly be a party plaintiff in any such action who refuses to join as plaintiff may be made a defendant.

(b) All actions under this section shall be commenced in the superior court of the county in which is situated any part of any real property against which any lien is sought to be enforced, or to which title is sought to be quieted against any lien, or claim of lien; but if in said action no lien against real property is sought to be enforced, the action shall be brought in the superior court of the county which has or which had jurisdiction of the administration of the estate of the decedent mentioned herein.

(c) Service of summons in the actions brought against the state shall be made on the controller of state and on the district attorney of the county in which the estate of the decedent mentioned herein is being administered, or has been administered in probate proceedings, and it shall be the duty of said district attorney to defend all such actions.

(d) The procedure and practice in all actions brought under this section, except as otherwise provided in this act, shall be governed by the provisions of the Code of Civil Procedure in relation to civil actions, so far as the same shall or may be applicable, including all provisions relating to motions for new trials and appeals.

(e) The remedies provided in this section shall be in addition to and not exclusive of any remedies provided in the sections preceding this section. (Stats. 1905, p. 348; Stats. 1911, p. 723.)

#### § 432. Notice to District Attorney That Tax is Due—Special Attorneys.

Sec. 19. Whenever the treasurer of any county shall have reason to believe that any transfer has been made within the meaning of this act and that a tax due thereon remains undetermined and unpaid, he shall notify the district attorney in writing of such transfer, and the district attorney, if he have probable cause to believe a tax is due, and remains undetermined, shall prosecute the necessary proceedings in the superior court to determine and fix such tax and for the enforcement and collection thereof.

The county treasurer in his discretion, for the better furtherance of the purposes of this act, shall be allowed to employ such special attorney or attorneys as he may deem necessary; provided that such attorney shall be

paid for his services out of the fees allowed such treasurer, as provided in section twenty-two of this act. (Stats. 1905, p. 348; Stats. 1911, p. 724.)

**§ 433. Costs of Proceedings Against Delinquent.**

Sec. 20. Whenever the superior court of any county shall certify that there was probable cause for issuing a citation and taking the proceedings specified in section seventeen or eighteen of this act or for taking any proceeding or action to determine the taxability of any transfer within the meaning of this act, or to secure a fair appraisal of any property taxable under this act, or for taking any appeal from any order or judgment fixing such tax or determining the taxability of any transfer within the meaning of this act, the state treasurer shall pay, or allow, to the treasurer of any county, all expenses incurred therefor, and for his other lawful disbursements that have not otherwise been paid. (Stats. 1905, p. 349; Stats. 1911, p. 724.)

**§ 434. Payment by County to State Treasurer.**

Sec. 21. The treasurer of each county shall collect and pay the state treasurer all taxes that may be due and payable under this act, who shall give him a receipt therefor; of which collection and payment he shall make a report, under oath, to the controller, between the first and fifteenth days of May and December of each year, stating for what estate paid, and in such form and containing such particulars as the controller may prescribe; and for all such taxes collected by him and not paid to the state treasurer by the first day of June and January of each year he shall pay interest at the rate of ten per centum per annum. (Stats. 1905, p. 349; Stats. 1911, p. 725.)

**§ 435. Commissions of County Treasurer.**

Sec. 22. The treasurer of each county shall be allowed to retain, on all taxes paid and accounted for by him each year under this act, in addition to his salary or fees now allowed by law, three per centum on the first fifty thousand dollars so paid and accounted for by him, one and one-half per centum on the next fifty thousand dollars so paid and accounted for by him, and one-half of one per centum on all additional sums so paid and accounted for by him; provided, that no county treasurer shall be entitled to retain to his own use more than the sum of two hundred dollars out of the inheritance taxes paid on account of any transfer or transfers made by, or resulting from the death of any one decedent. (Stats. 1905, p. 349; Stats. 1911, p. 725.)

**§ 436. Employment of Attorney by County Treasurer.**

Sec. 23. The treasurer of each county, in his discretion, for the better furtherance of the purposes of this act, shall be allowed to employ such special attorney or attorneys, as he may deem necessary, who shall have all the authority conferred upon the district attorney by sections 17 and 18 of this act, and such attorney shall be paid for his services out of the money collected under the provisions of this act a reasonable fee to be allowed

by the probate court having jurisdiction, said fee, together with the sum retained by the county treasurer, in no case to exceed the per centum allowed in such case by section twenty-two of this act. (Stats. 1905, p. 349; Stats. 1911, p. 725.)

**§ 437. Employment of Counsel by State Auditor.**

Sec. 24. The state controller, whenever he shall be cited as a party in any proceeding or action to determine any tax under this act provided, or whenever he shall deem it necessary for the better enforcement of this act to commence or appear in any proceeding or action to determine any tax hereunder, may, by and with the consent and approval of the attorney general, designate and employ counsel to represent him on behalf of the state, and, by and with such consent of attorney general, he is hereby authorized to incur the necessary expense for such employment and any reasonable and necessary expense incident thereto. And the county treasurer is hereby authorized and directed to pay out of any funds which may be in his hands on account of this tax, on presentation of a sworn itemized account and on certificate of the state controller and attorney general, all expenses incurred as in this section above provided, but no expense for legal services, up to and including the entry of the order of the court fixing the tax and the same becoming final, shall exceed ten per centum of the tax and penalties collected; provided, that all reasonable and necessary expenses incurred, other than attorneys' fees, including expense of serving processes, procuring evidence and printing and preparing of necessary legal papers, may be allowed and paid in the manner above provided, even though no tax be recovered in such action or proceeding, and the limitations herein made shall not apply thereto. (Stats. 1905, p. 350; Stats. 1911, p. 725.)

**§ 438. Disposition of Taxes Collected.**

Sec. 25. All taxes levied and collected under this act, up to the amount of \$250,000 annually, shall be paid into the treasury of the state, for the uses of the state school fund, and all taxes levied and collected in excess of \$250,000 annually shall be paid into the state treasury to the credit of the general fund thereof. (Stats. 1905, p. 350; Stats. 1911, p. 726.)

**§ 439. Refusal of Officers to Discharge Duties—Penalty Therefor.**

Sec. 26. Every officer who fails or refuses to perform, within a reasonable time, any and every duty required by the provisions of this act, or who fails or refuses to make and deliver within a reasonable time any statement or record required by this act, shall forfeit to the state of California the sum of one thousand dollars, to be recovered in an action brought by the attorney general in the name of the people of the state on the relation of the controller. (Stats. 1905, p. 350; Stats. 1911, p. 726.)

**§ 440. Definitions of Words Used in Statute.**

Sec. 27. The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor, or donor passing or trans-

ferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors, and shall include all personal property within or without the state. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described. The word "decedent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor.

The words "county treasurer" and "district attorney" and "inheritance tax appraiser," as used in this act, shall be taken to mean the treasurer or the district attorney or the inheritance tax appraiser of the county of the superior court having jurisdiction, as provided in section 16 of this act.

The words "contemplation of death" as used in this act shall be taken to include that expectancy of death which actuates the mind of a person on the execution of his will, and in nowise shall said words be limited and restricted to that expectancy of death which actuates the mind of a person in making a gift causa mortis, and it is hereby declared to be the intent and purpose of this act to tax any and all transfers which are made in lieu of or to avoid the passing of the property transferred by testate or intestate laws. (Stats. 1905, p. 350; Stats. 1911, p. 726.)

#### § 441. Repeal of Prior Statutes.

Sec. 28. An act entitled "An act to establish a tax on gifts, legacies, inheritances, bequests, devises, successions and transfers, to provide for its collection, and to direct the disposition of its proceeds; to provide for the enforcement of liens created by this act and for suits to quiet title against claims of lien arising hereunder; to repeal an act entitled 'An act to establish a tax on collateral inheritances, bequests, and devises, to provide for the collection, and to direct the disposition of its proceeds,' approved March 23, 1893, and all amendments thereto, and all acts and parts of acts in conflict with this act," approved March 20, 1905, and all amendments thereto, and all acts and parts of acts in conflict with this act are hereby expressly repealed; provided, however, that such repeal shall in nowise affect any suit, prosecution or court proceeding pending at the time this act shall take effect, or any right which the state of California may have at the time of the taking effect of this act, to claim a tax upon any property under the provisions of the act or acts hereby repealed, for which no proceeding has been commenced; nor affect any appeal, right of appeal in any suit pending, or orders fixing tax, existing in this state at the time of the taking effect of this act. (Stats. 1905, p. 350; Stats. 1911, p. 727.)

Sec. 29. This act shall take effect and be in force from and after July 1, 1911. (Stats. 1911, p. 727.)

## CHAPTER XXV.

### COLORADO STATUTE.

(*Laws 1902, pp. 49-57; Rev. Stats. 1908, pp. 1305-1309; Laws 1907, pp. 554, 555; Laws 1909, pp. 460-466.*)

- § 442. Transfers Subject to Tax—Rate of Taxation—Exemptions.
- § 443. Estates for Life or for Years and Remainders.
- § 444. Time for Payment of Tax—Interest and Discount.
- § 445. Collection of Tax by Executor.
- § 446. Sale of Property to Pay Tax.
- § 447. Payment by Executor to County Treasurer—Receipts and Vouchers.
- § 448. Notice from Executor to County Treasurer of Estates Subject to Tax.
- § 449. Refunding Excess Payments.
- § 450. Transfer or Delivery of Stocks, Securities and Deposits—Notice.
- § 451. Refund of Tax Erroneously Collected.
- § 452. Appraisers and Appraisement.
- § 453. Appraisers Taking Illegal Fees—Penalty.
- § 454. Jurisdiction of Court.
- § 455. Proceedings to Enforce Tax.
- § 456. Notice to District Attorney of Unpaid Tax—Proceedings for Enforcement.
- § 457. Statement to County Treasurer of Unpaid Taxes.
- § 458. Payment of Expenses Incurred by County Treasurer.
- § 459. Record to be Kept by State Treasurer.
- § 460. Duties of County Treasurer.
- § 461. Compensation of County Treasurer.
- § 462. Receipts—Lien of Tax—Time When Statute Takes Effect.

#### § 442. Transfers Subject to Tax—Rate of Taxation—Exemptions.

Sec. 1. All property, real, personal and mixed, which shall pass by will or by the intestate laws of this state from any person who may die seized possessed of the same while a resident of this state, or if decedent was not a resident of this state at the time of his death, which property or any part thereof shall be within this state, or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor, or intended to take effect, in possession or enjoyment after such death, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectation to any property or income thereof, shall be and is, subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the state, and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. Whenever the beneficial interest to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child,

brother, sister, wife or widow of the son, or the husband of the daughter, or any child or children adopted as such in conformity with the laws of the state of Colorado, or to any person to whom the deceased, for not less than ten years prior to the death, stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, in every such case the rate of tax shall be two dollars on every hundred dollars of the clear market value of such property received by each person, and at and after the same rate for every less amount; provided, that the sum of ten thousand dollars (\$10,000) of any such estate, vesting in the grantee in perpetuity shall not be subject to any such duty or tax, and that only the amount in excess of ten thousand dollars (\$10,000) shall be subject to the above duty or tax. When the beneficial interests to any property or income therefrom shall pass to or from the use of any uncle, aunt, niece, nephew, or any lineal descendant of the same, in every such case the rate of such tax shall be three dollars on every one hundred dollars of the clear market value of such property received by each person. In all other cases the rate shall be as follows: On each and every hundred dollars of the clear market value of all property and at the same rate for any less amount; on all estates of ten thousand dollars and less, three dollars; on all estates of over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on all estates over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars, and on all estates over fifty thousand dollars, and not exceeding five hundred thousand dollars, six dollars, and on all estates over five hundred thousand dollars, ten dollars; provided, that an estate in the above case which may be valued at a less sum than five hundred dollars shall not be subject to any such duty or tax; provided, that the following classes of property shall be exempt from the inheritance tax, to wit: All property devised, bequeathed or descending by deed in contemplation of death to the state of Colorado, or to any county, city, town, and any other municipality, or for the use of public libraries, for religious or charitable purposes exclusively, or for schools and colleges not for profit. (Mills' Stats. 1905, p. 1016; Rev. Stats. 1908, p. 1305; Laws 1909, p. 460.)

#### § 443. Estates for Life or for Years and Remainders.

Sec. 2. When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother, sister, the widow of the son, the husband of the daughter, or a lineal descendant during the life or for a term of years and remainder to the collateral heir of the decedent, or to the stranger in blood or to the body politic or corporate at their decease, or on the expiration of such term, the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and the tax prescribed by this act on the estate of the deceased shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid. (Mills' Stats. 1905, p. 1017; Rev. Stats. 1908, p. 1306; Laws 1909, p. 462.)

**§ 444. Time for Payment of Tax—Interest and Discount.**

Sec. 3. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and interest at the rate of six per cent per annum shall be charged and collected thereon for such time as said taxes are not paid; provided, that if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per cent shall be allowed and deducted from said tax, and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section twenty-two of this act for the payment of said tax, together with interest. (Mills' Stats. 1905, p. 1018; Rev. Stats. 1908, p. 1306.)

**§ 445. Collection of Tax by Executor.**

Sec. 4. Any administrator, executor or trustee having any charge or trust in legacies or property for distribution subject to the said tax shall deduct the tax therefrom, or if the legacy or property be not money he shall collect a tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon, and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator or trustee, before paying the same shall deduct said tax therefrom and pay the same to the county treasurer for the use of the state, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the said payment of said legacies might be enforced; if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of his accounts to make an apportionment, if the case requires it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require. (Mills' Stats. 1905, p. 1018; Rev. Stats. 1908, p. 1306.)

**§ 446. Sale of Property to Pay Tax.**

Sec. 5. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled to do by law, for the payment of debts of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed. (Mills' Stats. 1905, p. 1018; Rev. Stats. 1908, p. 1306.)

**§ 447. Payment by Executor to County Treasurer—Receipts and Vouchers.**

Sec. 6. Every sum of money retained by any executor, administrator or trustee, or paid into his hands for any tax on any property, shall be paid by him within thirty days thereafter to the treasurer of the proper county, and the said treasurer or treasurers shall give, and every executor, adminis-

trator or trustee shall take, duplicate receipts from him of said payments, one of which receipts he shall immediately send to the state treasurer, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts, but the executor, administrator or trustee shall not be entitled to credit in his accounts or be discharged from liability for such tax unless he shall produce a receipt so sealed and countersigned by the treasurer and a copy thereof certified by him. (Mills' Stats. 1905, p. 1018; Rev. Stats. 1908, p. 1307.)

**§ 448. Notice from Executor to County Treasurer of Estates Subject to Tax.**

Sec. 7. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate, or to any person or persons, or in trust for them, or some of them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof in writing to the treasurer of the county where said real estate is situated, within six months after they undertake the execution of their duties, or if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge. (Mills' Stats. 1905, p. 1019; Rev. Stats. 1908, p. 1307.)

**§ 449. Refunding Excess Payments.**

Sec. 8. Whenever debts shall be proved against the estate of the decedent after distribution of legacies from which the inheritance tax has been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a due proportion of the said tax shall be repaid to him by the executor or administrator, if the said tax has not been paid into the state or county treasury, or by the county treasurer if it has been so paid. (Mills' Stats. 1905, p. 1019; Rev. Stats. 1908, p. 1307.)

**§ 450. Transfer or Delivery of Stocks, Securities and Deposits—Notice.**

Sec. 9. If a foreign executor, administrator or trustee, shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, bank or other institution, person or persons, holding or controlling the transfer of securities or assets of a decedent, resident or nonresident, including the shares of capital stock of, or other interest in, such institution shall deliver or transfer the same to the executors, administrators, or legal representatives of the decedent, or upon their order or request, unless notice in writing of the time and place of such intended transfer be served upon the said appraiser of the proper district and the attorney general of the state at least ten days prior to the said transfer; nor shall any such safe deposit company, bank or other institution, person or persons, deliver or transfer any securities or assets of a sufficient portion or amount thereof to pay any tax and interest which may be due or thereafter



be assessed the estate of a nonresident decedent without retaining on account of the transfer of such securities or assets under the provisions of this article, unless the attorney general consents thereto in writing. And it shall be lawful for the said appraiser or attorney general to examine said securities or assets at the time of such delivery or transfer. Failure to serve such notice or to allow such examination, or to retain a sufficient portion or amount to pay such tax and interest as herein provided, shall render such safe deposit company, trust company, bank or other institution, person or persons, liable to the payment of the tax and interest due upon said securities or assets, in pursuance of the provisions of this article. (Mills' Stats. 1906, p. 1019; Rev. Stats. 1908, p. 1307; Laws 1909, p. 462.)

**§ 451. Refund of Tax Erroneously Collected.**

Sec. 10. When any amount of said tax has been paid or shall have been paid erroneously to the state treasurer, it shall be lawful for, and be the duty of, the state auditor, upon certificate of any county treasurer, who collected the same, and of the state treasurer, and of the judge of the court, which ordered the payment of any such erroneous tax (which said last certificate shall designate the amount erroneously paid by each person paying same), to draw a warrant on the state treasurer, payable to the executor, administrator or trustee, person or persons, who may have paid any such tax in error, or to the heirs at law or person or persons legally entitled thereto, the amount of such tax so erroneously paid, and it shall be the duty of the state treasurer, upon presentation of any such warrant to pay the same.

It shall also be the duty of any county treasurer to whom any inheritance tax has been erroneously paid, and to whom a commission or other allowance has been paid for collecting same, upon certificate of the judge of the court under seal of the court which ordered the payment of any such erroneous tax being filed with him, showing in what amount the payment of any such inheritance tax was erroneous, to refund and repay to the executor, administrator or trustee, person or persons who may have paid any amount of such tax in error, or to the heirs at law or person or persons legally entitled thereto, the amount of commission or fees charged by such county treasurer for collecting the amount so erroneously paid.

Provided that all applications for the repayment of said tax erroneously paid, and for said treasurer's commission, shall be made within two years from the date of said payment.

This section as hereby amended shall apply to all erroneous payments of inheritance tax heretofore made, as well as to those which may hereafter be made. (Mills' Stats. 1906, p. 1019; Rev. Stats. 1908, p. 1307; Laws 1907, p. 554.)

**§ 452. Appraisers and Appraisements.**

Sec. 11. For the purpose of facilitating and properly collecting the said inheritance tax, and in order to fix the value of the property of persons, whose estates shall be subject to the payment of said tax, the said counties of the state of Colorado shall be grouped into three districts, to be known as districts number one, number two and number three, and the

attorney general shall appoint one person as appraiser for each of these districts to serve for a period of two years; and the attorney general shall have the power of removal of any of the said appraisers for malfeasance in office or failure to perform their duties as appraisers, as hereinafter provided.

The appraiser appointed for district number one shall receive an annual salary of twenty-four hundred dollars (\$2,400.00) together with his actual and necessary traveling expenses and witness fees. The appraisers for district number two and district number three shall each receive an annual salary of eighteen hundred dollars (\$1,800.00), together with their actual and necessary traveling expenses and witness fees. The state treasurer shall pay the said salaries of the said appraisers, together with their necessary traveling expenses and witness fees monthly out of any fund in his hands or custody on account of the inheritance tax, and he shall retain out of any funds in his hands received from said inheritance tax a sufficient fund, at all times, to pay the said salaries of said appraisers, together with a sufficient fund to pay the necessary traveling expenses and witness fees of the said appraisers. The state auditor is authorized to issue a warrant upon the state treasurer, upon presentation to him of a voucher, signed by the governor and the attorney general for the amount of said salaries, and the said necessary traveling expenses and witness fees.

The counties of the state shall be and hereby are grouped, for the purpose of appointment of appraisers, the appraisement of estates and the collection of the inheritance tax into the following districts:

District Number One: Adams, Arapahoe, Cheyenne, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson, Kit Carson, Logan, Morgan, Phillips, Sedgwick, Washington, Weld, Yuma.

District Number Two: Archuleta, Baca, Bent, Conejos, Costilla, Custer, Dolores, El Paso, Fremont, Huerfano, Kiowa, La Plata, Las Animas, Lincoln, Mineral, Montezuma, Otero, Prowers, Pueblo, Rio Grande, Saguache, San Juan, Teller.

District Number Three: Boulder, Chaffee, Delta, Eagle, Garfield, Grand, Gunnison, Hinsdale, Lake, Larimer, Mesa, Montrose, Ouray, Park, Pitkin, Rio Blanco, Routt, San Miguel, Summit.

Each of the said appraisers shall file with the secretary of the state his oath of office, and his official bonds in the penal sum of not less than one thousand dollars (\$1,000.00), nor more than twenty thousand dollars (\$20,000.00) in the discretion of the attorney general, conditioned upon the faithful performance of his duties as such appraiser, which bond shall be approved by the attorney general.

It shall be the duty of the several appraisers, as often as, or whenever the occasion may require, or upon the motion of any person interested in the estate, including the state or the county court itself, to appraise the estate of any deceased person in the county to which the appraiser is appointed, and the appraiser shall forthwith give notice by mail to all persons known to have or claim an interest in such property, and to such persons as the county judge may by order direct, of the time and place at which he will appraise such property, and at such time and place to appraise the same at

a fair market value, and for that purpose the appraiser is authorized by leave of the county judge to use subpoenas for and compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make a report in duplicate thereof and of such value in writing to the county court and the attorney general showing the fair market value of all of the estate belonging to the deceased at the time of his death and the description of the same; all debts, claims, fees and commissions filed against said estate or allowed by the county court, together with all fees which have been allowed to the executor or administrator, or which may be claimed by the executor or administrator or which may be claimed by the executor or administrator for services in behalf of said estate; the names, relationship and residence of all persons receiving or claiming any of the estate of the deceased, together with the names of all corporations, or institutions claiming any of the estate of the deceased; a description of any property belonging to the estate of said decedent that may have been transferred by deed, grant, sale or gift made in contemplation of death of the grantor, or bargainor, or intended to take effect in possession or enjoyment after such death; a description of all estates left by the decedent, whether estates in fee, annuities, life estates or for a term of years; whether such decedent died intestate or left a will, together with the depositions of the witnesses examined and such other facts in relation thereto as the county court may by order require to be filed in the office of the clerk of said county court; and from this report the said county court shall forthwith make and order and fix the then cash value of all estates, annuities and life estates or terms of years growing out of said estate, and the tax to which the same is liable, and shall immediately give notice by mail to all parties known to be interested therein. It shall be the duty of each of the said appraisers upon learning of the death of any person known to have or supposed to have died possessed of an estate in his district to immediately make an investigation, and to inform the attorney general and county court of the county wherein the person lived, of any information received by him respecting the estate of the deceased. Any person or persons dissatisfied with the assessment made or tax fixed by the county court of the estate of the decedent may appeal therefrom, after the fixing of the tax by the county court, to the district court of the proper county, within sixty days after the making of said assessment and the fixing of said tax, upon giving good and sufficient security to the satisfaction of the county judge to pay all costs, together with whatever taxes shall be fixed by the county court. Witnesses subpoenaed by said appraiser shall be paid such fees as now provided by law; provided, that the appraiser may with the consent of the county court on the petition of the attorney general, call in expert witnesses, the amount of whose fees shall be determined by the county court. (Mills' Stats. 1905, p. 1019; Laws 1909, p. 463.)

**§ 453. Appraisers Taking Illegal Fees—Penalty.**

Sec. 12. Any appraiser appointed by this act who shall take any fees or reward from any executor, administrator, trustee, legatee, next of kin

or heir of any decedent, or from any other person liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors he shall be fined not less than two hundred and fifty dollars, nor more than five hundred dollars, and imprisoned not exceeding ninety days, and in addition thereto the county judge shall dismiss him from such service. (Mills' Stats. 1905, p. 1020; Rev. Stats. 1908, p. 1308.)

**§ 454. Jurisdiction of Court.**

Sec. 13. The county court in the county in which the real property is situated, of the decedent who was not a resident of the state, or in the county of which the deceased was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the county court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other. (Mills' Stats. 1905, p. 1020; Rev. Stats. 1908, p. 1308.)

**§ 455. Proceedings to Enforce Tax.**

Sec. 14. If it shall appear to the county court that any tax accruing under this act has not been paid according to law, it shall issue a summons summoning the persons interested in the property liable to the tax to appear before the court on a day certain not more than three months after the date of such summons, to show cause why said tax should not be paid. The process, practice and pleadings and the hearing and determination thereof, and the judgment in said court in such cases, shall be the same as those now provided or which may hereafter be provided in probate cases in the county courts in this state, and the fees and costs in such cases shall be the same as in probate cases in the county courts of this state. (Mills' Stats. 1905, p. 1021; Rev. Stats. 1908, p. 1308.)

**§ 456. Notice to District Attorney of Unpaid Tax—Proceedings for Enforcement.**

Sec. 15. Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the person interested in the property liable to pay said tax to pay the same, he shall notify the district attorney of the proper county, in writing, of such refusal to pay said tax, and the district attorney so notified, if he has proper cause to believe a tax is due and unpaid, shall prosecute the proceeding in the county court in the proper county, as provided in section 34 [14] of this act for the enforcement and collection of such tax, and in such case said court shall allow as costs in the said case such fees to said attorney as he may deem reasonable. (Mills' Stats. 1905, p. 1021; Rev. Stats. 1908, p. 1309.)

**§ 457. Statement to County Treasurer of Unpaid Taxes.**

Sec. 16. The county judge and county clerk of each county shall, every three months, make a statement in writing to the county treasurer of the county of the property from which, or the party from whom, he has reason

to believe a tax under this act is due and unpaid. (Mills' Stats. 1905, p. 1021; Rev. Stats. 1908, p. 1309.)

**§ 458. Payment of Expenses Incurred by County Treasurer.**

Sec. 17. Whenever the county judge of any county shall certify that there was probable cause for issuing a summons and taking the proceedings specified in section 34 [14] of this act, the state treasurer shall pay or allow to the treasurer of any county all expenses incurred for service of summons and his other lawful disbursements that have not otherwise been paid. (Mills' Stats. 1905, p. 1021; Rev. Stats. 1908, p. 1309.)

**§ 459. Record to be Kept by State Treasurer.**

Sec. 18. The treasurer of the state shall furnish to each county judge a book, in which he shall enter the returns made by appraisers, the cash value of annuities, life estates and terms of years and other property fixed by him, and the tax assessed thereon, and the amounts of any receipts for payments thereof filed with him which book shall be kept in the office of the county judge as a public record. (Mills' Stats. 1905, p. 1021; Rev. Stats. 1908, p. 1309.)

**§ 460. Duties of County Treasurer.**

Sec. 19. The treasurer of each county shall collect and pay the state treasurer all taxes that may be due and payable under this act, who shall give him a receipt therefor, of which collection and payment he shall make a report under oath to the state auditor on the first Mondays in March and September of each year, stating for what estate paid, and in such form and containing such particulars as the auditor may prescribe, and for all said taxes collected by him and not paid to the state treasurer by the first day of October and April of each year, he shall pay interest at the rate of ten per cent per annum. (Mills' Stats. 1905, p. 1022; Rev. Stats. 1908, p. 1309.)

**§ 461. Compensation of County Treasurer.**

Sec. 20. The treasurer of each county shall be allowed to retain two per cent on all taxes paid and accounted for by him under this act, in full for his services in collecting and paying the same, to be taken as a part of his salary or fees now allowed by law, but not otherwise. (Mills' Stats. 1905, p. 1022; Rev. Stats. 1908, p. 1309.)

**§ 462. Receipts—Lien of Tax—Time When Statute Takes Effect.**

Sec. 21. Any person, or body politic or corporate, shall, upon the payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county, or the copy of the receipt, at his option, that may have been given by said treasurer for the payment of any tax under this act, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any decedent may have died seized, said tax has been paid and by whom paid, and whether or not it is in full of said tax; and said receipt may be recorded in the clerk's office of said

county in which the property may be situated, in the book to be kept by said clerk for such purpose.

The lien of the inheritance tax provided herein shall continue until the said tax is settled and satisfied; provided, that lien shall be limited to the property chargeable therewith.

This act shall affect only the estates of decedents dying after its passage and estates of all decedents dead before its passage shall be taxed under previously existing law. (Mills' Stats. 1905, p. 1022; Rev. Stats. 1908, p. 1309; Laws 1909, p. 466.)

## CHAPTER XXVI.

### CONNECTICUT STATUTE.

(*Gen. Stats. 1902, pp. 613-616; Pub. Acts. 1903, pp. 42, 43; Pub. Acts. 1905, pp. 455, 456; Pub. Acts. 1907, pp. 729-731; Pub. Acts 1909, pp. 1161-1163; Pub. Acts 1911, pp. 1478, 1479.*)

- § 463. Exemptions from Tax—Nonresident Decedents.
- § 464. Transfers Subject to Tax—Rates—Persons Liable—Interest.
- § 465. Nonresident Decedents—Stocks, Bonds and Securities.
- § 466. Ancillary Administration on Estate of Nonresident—Notice.
- § 467. Effect of Failure to Take Out Ancillary Administration.
- § 468. Transfer or Delivery of Stocks and Property—Notice.
- § 469. Transfer or Delivery of Stocks and Property—Assessment by Tax Commissioner.
- § 470. Repeal of Certain Sections.
- § 471. Inventories and Appraisements.
- § 472. Payment by Executor to State Treasurer.
- § 473. Estates for Years or for Life and Remainders.
- § 474. Sale of Property to Pay Tax.
- § 475. Application by Treasurer for Appointment of Administrator.
- § 476. Jurisdiction of Probate Court—State Treasurer to Represent State.
- § 477. Executor's Account not Settled Until Taxes Paid.
- § 478. Transfers to Take Effect upon Death of Grantor.
- § 479. Powers of Appointment.
- § 480. Time When Statute Takes Effect.

**§ 463. Exemptions from Tax—Nonresident Decedents.**

Sec. 2367. The estate of every deceased person, to the amount of ten thousand dollars, when such estate shall pass to the parent or parents, lineal descendants, legally adopted child, lineal descendants of any legally adopted child, the wife or widow of a son, whether such son was born in wedlock or adopted, the husband of a daughter, whether such daughter was born in wedlock or adopted, or the brother or sister of the decedent; and, in addition to said amount, all gifts of paintings, pictures, books, engravings, bronzes, curios, bric-a-brac, arms and armor, and collections of articles of beauty or interest, made by will to any corporation or institution located in this state for free exhibition and preservation for public benefit; also, in addition to said amount, every devise, bequest, or inheritance, not exceeding five hundred dollars in amount or appraised value, passing to other kindred or strangers to the blood, or to a corporation, voluntary association, or society, shall be exempt from the payment of any succession tax; and, subject to such exemption, the estate of every deceased person shall be subject to the tax provided for in section 2368. When a portion of the property passes to or for the use of the parent or parents, husband, wife, lineal descendants, legally adopted child, lineal descendants of any legally adopted child, the wife or widow of a son, whether such son was born in wedlock or legally

adopted, the husband of a daughter, whether such daughter was born in wedlock or legally adopted, or the brother or sister of the decedent, and the remaining portion to other kindred or strangers to the blood, or to a corporation, voluntary association, or society, the amount of the estate passing to persons mentioned in the first class exempted from taxation shall be that proportion of ten thousand dollars which the value of the property passing to those persons bears to the total value of the whole estate. The amount of the property of the estates of nonresident decedents which shall be exempt from the payment of a succession tax shall be only that proportion of the whole exempted amount which is provided for the estates of resident decedents which the amount of the estate of the nonresident decedent which is actually or constructively in this state, bears to the total value of the nonresident decedent's estate wherever situated. (Gen. Stats. 1902, p. 613; Pub. Acts 1909, p. 1161; Pub. Acts 1911, p. 1478.)

**§ 464. Transfers Subject to Tax—Rates—Persons Liable—Interest.**

Sec. 2368. In all such estates any property within the jurisdiction of this state, and any interest therein, whether tangible or intangible, and whether belonging to parties in this state or not, which shall pass by will or by inheritance or by other statutes to the parent or parents, husband, wife, or lineal descendants, or legally adopted child of the deceased person, shall be liable to a tax of one per centum of its value for the use of the state; and any such estate or interest therein which shall so pass to collateral kindred, or to strangers to the blood, or to any corporation, voluntary association, or society, shall be liable to a tax of five per centum of its value for the use of the state. All executors and administrators shall be liable for all such taxes, with interest thereon at the rate of nine per centum per annum from the time when said taxes shall become payable until the same shall have been paid as hereinafter directed. (Gen. Stats. 1902, p. 613; Pub. Acts 1905, p. 455; Pub. Acts 1907, p. 729; Pub. Acts 1909, p. 1161.)

**§ 465. Nonresident Decedents—Stocks, Bonds and Securities.**

Sec. 2368a. The provisions of section 2368 of the general statutes as amended by section one of chapter 63 of the public acts of 1903, shall apply to the following property belonging to deceased persons, nonresidents of this state, which shall pass by will or inheritance under the laws of any other state or country, and such property shall be subject to the tax prescribed in said section: All real estate and tangible personal property, including moneys on deposit, within this state; all intangible personal property, including bonds, securities, shares of stock, and choses in action the evidences of ownership of which shall be actually within this state; shares of the capital stock or registered bonds of all corporations organized and existing under the laws of this state the certificate of which stock or which bonds shall be without this state, where the laws of the state or country in which such decedent resided shall, at the time of his decease, impose a succession, inheritance, transfer, or similar tax upon the shares of the capital stock or registered bonds of all corporations organized or existing under the laws of such state or country, held under such conditions at their decease by residents of this state. (Pub. Acts 1907, p. 729.)



**§ 466. Ancillary Administration on Estate of Nonresident—Notice.**

Sec. 2368b. Whenever ancillary administration has been taken out in this state on the estate of any nonresident decedent having property subject to said tax under the provisions of section one of this act, the court of probate having jurisdiction shall have the same powers in relation to such tax and shall give the same notice to the state treasurer of all hearings relating thereto as is required in the case of the estates of resident decedents, and with the same right of appeal. The provisions of this act concerning notice to the tax commissioner shall not apply to cases where ancillary administration has been taken out in this state upon the estates of nonresident decedents. (Pub. Acts 1907, p. 730.)

**§ 467. Effect of Failure to Take Out Ancillary Administration.**

Sec. 2368c. Where ancillary administration has not been taken out in this state on the estate of a nonresident decedent, including any property within the provisions of section one of this act, no executor, administrator, or trustee appointed under the laws of any other jurisdiction shall assign, transfer, or take possession of any such property standing in the name or belonging to the estate of, or held in trust for, such decedent until the tax prescribed in section 2368 as amended shall have been paid to the state treasurer or retained as herein provided. (Pub. Acts 1907, p. 730.)

**§ 468. Transfer or Delivery of Stocks and Property—Notice.**

Sec. 2368d. No corporation or person in this state having possession of or control over any such property, including any corporation any shares of the capital stock of which may be subject to said tax, shall deliver or transfer the same to such foreign executor, administrator, or trustee, or to the legal representatives of such decedent, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be mailed to the tax commissioner at least ten days prior to said delivery or transfer; nor shall any such corporation make any such delivery or transfer without retaining a sufficient amount of said property to pay any such tax which may be due or may thereafter become due under said section 2368 as amended, unless the said tax commissioner consents thereto in writing. Failure to mail such notice, or to allow the tax commissioner to examine said property, or to retain a sufficient amount to pay such tax shall, in the absence of the written consent of the tax commissioner, render such corporation or person liable to the payment of a penalty of three times the amount of such tax, which payment shall be enforced in an action brought in the name of the state. (Pub. Acts 1907, p. 730.)

**§ 469. Transfer or Delivery of Stocks and Property—Assessment by Tax Commissioner.**

Sec. 2368e. Said tax commissioner, personally or by his representative, may examine said property at the time of said delivery or transfer, and it shall be his duty, as speedily as possible after receiving notice of said property or of the intended delivery or transfer thereof, to fix the valuation of such property for the purpose of assessing such tax; and he shall assess the tax, and the amount thereof, payable on said property. Wherever a tax

is assessed on such property by such tax commissioner he shall forthwith lodge with the state treasurer a statement showing such valuation with the amount of said tax, and shall give notice thereof to the person or corporation having possession of or control over said property. Any administrator or executor appointed under the laws of any other jurisdiction who is aggrieved by the valuation or assessment affixed as aforesaid by the tax commissioner, may, within twenty days after the date of the filing of the aforesaid statement with the treasurer, apply to the court of probate in any district in which any of said property so assessed is situated, which court shall have full power to cause a revaluation of all property so assessed and a reassessment of the tax thereon, to be made in the manner provided by law for the appraisal of and the assessment of the succession tax on estates of resident decedents, and subject to the same right of appeal. (Pub. Acts 1907, p. 731.)

**§ 470. Repeal of Certain Sections.**

Sec. 2368f. Section two of chapter 63 of the public acts of 1903 as amended by chapter 256 of the public acts of 1905 is hereby repealed. (Pub. Acts 1907, p. 731.)

**§ 471. Inventories and Appraisements.**

Sec. 2369. The court of probate having jurisdiction of the settlement of any estate shall, within ten days after the filing of a will or the application for letters of administration, if in its opinion said estate exceeds in value said sum of ten thousand dollars, send to the treasurer of the state a certificate of the filing of such will or application, and shall within ten days after the return and acceptance of the inventory and appraisal of any such estate send a certified copy of said inventory and appraisal to the treasurer of the state, together with his certificate as to the correctness in his opinion of said inventory and appraisal; and if no new appraisal is made as hereinafter provided the valuation therein given shall be taken as the basis for computing said taxes. The said court of probate shall, on the application of the treasurer of the state, or any person interested in the succession thereof, and within four months after granting administration, appoint three disinterested persons who shall view and appraise such property at its actual value for the purposes of said tax, and make return thereof to said court, and on the acceptance of said return, after public notice and hearing, the valuation therein made shall be binding upon the persons interested and upon the state. If any executor or administrator shall neglect or refuse to return an inventory and appraisal within the time now required by law, unless said time shall have been extended by said court for cause, after hearing and such notice as the court of probate may require, the said court of probate may remove said executor or administrator, and appoint another person administrator with the will annexed, or administrator, as the case may be. (Gen. Stats. 1902, p. 614.)

**§ 472. Payment by Executor to State Treasurer.**

Sec. 2370. All taxes imposed by section 2368 shall be paid to the treasurer of the state by the executor or administrator within one year after the

qualification of such executor or administrator, except as hereinafter provided. If for any cause found by the said court of probate to be reasonable, after hearing and notice to the treasurer of the state, the executor or administrator is unable to pay said tax within the time limited, the said court of probate shall have power in its discretion to extend the time for the payment of said taxes. (Gen. Stats. 1902, p. 614.)

#### § 473. Estates for Years or for Life and Remainders.

Sec. 2371. Where any estate or an annuity is bequeathed or devised to any person for life or any limited period, with remainder over to another or others, and all the beneficiaries are within the same class, the tax shall be computed on and paid as aforesaid out of the principal sum of property so bequeathed or devised. Where a life estate or an annuity is bequeathed or devised to a parent or parents, husband, wife, or lineal descendants, or legally adopted child, and remainder over to collateral kindred, or to strangers to the blood, or to a corporation, voluntary association, or society, then the tax of one per centum shall be paid out of the principal sum or estate so bequeathed or devised for life, or constituting the fund producing said annuity, and the remaining four per centum due from collateral kindred or strangers to the blood shall be paid out of the said principal sum or estate at the expiration of the particular estate or annuity. And where a life estate or annuity is bequeathed or devised to collateral kindred or strangers to the blood, or to a corporation, voluntary association, or society, with remainder to parent or parents, husband, wife, or lineal descendants, or legally adopted child, a tax of five per centum shall be paid as aforesaid to the treasurer of the state out of the principal sum or estate, or fund producing said annuity; on the termination of said life estate or annuity the treasurer of the state shall refund and pay to the person or persons entitled to the remainder four-fifths of said tax. The said court of probate shall send to the treasurer of the state a certificate of the date of the death of said life tenant or annuitant within ten days after the same has come to its knowledge. (Gen. Stats. 1902, p. 614; Pub. Acts 1909, p. 1162.)

#### § 474. Sale of Property to Pay Tax.

Sec. 2372. All administrators or executors shall have power to sell so much of the estate as will enable them to pay said tax. In case specific estate or property is bequeathed or devised to any person unless the legatee or devisee shall pay to the executor the amount of the tax due thereon by the provisions of section 2368, the executor shall sell said property or so much thereof as may be necessary to pay said tax and the fees and expenses of said sale. (Gen. Stats. 1902, p. 615.)

#### § 475. Application by Treasurer for Appointment of Administrator.

Sec. 2373. In case of the neglect or refusal of any person interested to apply for letters of administration within thirty days after the death of any intestate, the treasurer of the state may apply to the court of probate having jurisdiction for the appointment of an administrator; and thereupon after hearing and public notice the said court of probate shall appoint an administrator of said estate. (Gen. Stats. 1902, p. 615.)

**§ 476. Jurisdiction of Probate Court—State Treasurer to Represent State.**

Sec. 2374. The court of probate, having either principal or ancillary jurisdiction of the settlement of the estate of the decedent, shall have jurisdiction to hear and determine all questions in relation to said tax that may arise affecting any devise, legacy, or inheritance under section 2368, subject to appeal as in other cases, and the state treasurer shall represent the interests of the state in any such proceeding. (Gen. Stats. 1902, p. 615.)

**§ 477. Accounts of Executor not Settled Until Tax Paid.**

Sec. 2375. No final settlement of the account of any executor or administrator shall be accepted or allowed by any court of probate unless it shall show, and the judge of said court shall find, that all taxes, imposed by the provisions of section 2368 upon any property or interest belonging to the estate to be settled by said account, shall have been paid, and the receipt of the treasurer of the state for such tax shall be the proper voucher for such payment. (Gen. Stats. 1902, p. 615.)

**§ 478. Transfers to Take Effect on Death of Grantor.**

Sec. 2376. All transfers and alienations by deed, grant, or other conveyance, of real or personal estate, to take effect upon the death of the grantor or donor, shall be testamentary gifts within the taxation purposes of section 2368, and all property so conveyed shall be conveyed subject to the tax imposed by said section, and upon the same principles and percentages regarding the degree of relationship; and the grantee or donee of any such estate shall, upon receipt thereof, pay to the treasurer of the state a tax of five per centum, or one per centum of the value of such property, according to his aforesaid degree of relationship to the grantor or donor, and the executor or administrator of any such grantor or donor shall at once communicate to the treasurer of the state his knowledge of any and all such conveyances. No executor, administrator, or bailee having possession of any deed, grant, conveyance, or other evidence of such transfer or alienation shall deliver the same or anything connected with the subject of such transfer or alienation until the tax aforesaid has been paid to the treasurer of the state. (Gen. Stats. 1902, p. 615; Pub. Acts 1909, p. 1162.)

**§ 479. Powers of Appointment.**

Sec. 2376a. Whenever any person or corporation shall exercise the power of appointment derived from any disposition of property made either before or after the passage of this act, all property under such appointment, when made, shall be deemed to be taxable under the laws of this state in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such power of appointment so derived shall fail or omit to exercise the same within the time provided therefor, in whole or in part, the passing of such property taxable under the laws of this state shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the

possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure. (Gen. Stats. 1902, p. 615; Pub. Acts 1909, p. 1163.)

**§ 480. Time When Statute Takes Effect.**

Sec. 2377. Sections 2367 to 2376, both inclusive, shall not apply to the estates of any persons deceased before June first, 1897; but the estates of all persons who died before July first, 1893, and on or after August first, 1889, shall be subject to the provisions of chapter 180 of the public acts of 1889; and the estates of all persons who died before June first, 1897; and on or after July first, 1893, shall be subject to the provisions of said chapter 180 as modified by chapter 257 of the public acts of 1893. Said chapters 180 and 257 are continued in force for the purposes in this section expressed. (Gen. Stats. 1902, p. 616.)

## CHAPTER XXVII.

## DELAWARE STATUTE.

*(Laws of 1869; Laws of 1883; Laws of 1909, pp. 514-520.)*

- § 481. Transfers Subject to Tax—Rates—Exemptions.
- § 482. Liability for Payment of Tax—Exemptions.
- § 483. Inventory, Appraisement and Valuation—Lien—Collection.
- § 484. Liability of Executor and Sureties.
- § 485. Payment by Executor to Register of Wills.
- § 486. Receipts for Payment of Tax.
- § 487. Duty of Register of Wills to Pay Over Money and Make Returns—Commissions.

§ 481. Transfers Subject to Tax—Rates—Exemptions.

Sec. 1. All property within the jurisdiction of this state, real and personal, and every estate and interest therein, whether belonging to inhabitants of this state or not, which shall, after the approval of this act, pass by will, or by the intestate laws of this state, or by deed, grant, or gift (except in cases of a bona fide purchase for full consideration in money or money's worth) made or intended to take effect in possession or enjoyment after the death of the grantor, or donor, to any person, or persons, bodies politic, or corporate, in trust or otherwise, other than to or for the use of the father, mother, grandfather, grandmother, wife, husband, child, or children by birth or legal adoption, or lineal descendant, of the grantor, donor, deviser, or intestate (hereinafter called the decedent) shall be subject to taxation and pay the following taxes, that is to say:—where the successor shall be a brother or sister, or a descendant of a brother or sister of the decedent, a tax at the rate of one per centum upon the value thereof; where the successor shall be a brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the decedent, a tax at the rate of two per centum upon the value thereof; where the successor shall be a brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother of the decedent, a tax at the rate of three per centum upon the value thereof; where the successor shall be in any other degree of collateral consanguinity to the decedent, than is hereinbefore described, or shall be a stranger in blood to him, a tax at the rate of five per centum of the value thereof; provided that if the value of the property, estate or interest therein, passing as aforesaid to any successor, shall not exceed the sum of five hundred dollars (\$500), then and in such event the successor shall be entitled to receive the same, free and exempt from any tax imposed by the provisions of this act; and provided further that nothing in this act shall be construed to impose any tax upon any property, estate or interest therein passing to or for the use, or in trust for, charitable, educational or religious societies or institutions, or cities or towns for public improvement, or to school districts or library commissions. *(Laws 1909, p. 514.)*

**§ 482. Liability for Payment of Tax—Exemptions.**

Sec. 2. Every pecuniary legacy, and every distributive share of an estate payable in this state, shall be subject to the tax prescribed in section 1 of this act, and every executor or administrator to whom administration may be granted, before he pays any pecuniary legacy, or distributes the shares of any estate liable to the tax imposed by the preceding section, shall pay to the register of wills of the proper county, for the use of the state, that per centum of all moneys he may hold for distribution among the distributees or legatees, as is prescribed in the preceding section. The tax aforesaid shall be paid by such executor or administrator within thirteen months from the granting of letters testamentary, or of administration, and any executor or administrator neglecting or refusing to pay the said tax shall not be allowed by the register any commissions on the estate, and shall be liable, on his official bond, for the amount of the tax due the state on the funds in his hands. The exemptions prescribed in section 1 of this act shall apply to all legacies and distributive shares of estate. (Laws 1909, p. 515.)

**§ 483. Inventory, Appraisalment and Valuation—Idem—Collection.**

Sec. 3. The estate or interest of every person, body politic or corporate, in all real and personal property, taxable under the provisions of section 1 of this act, whether in remainder, reversion or otherwise, or in trust or otherwise, or conditioned upon the happening of a contingency or dependent upon the exercise of a discretion, or subject to a power of appointment, or otherwise, and all annuities taxable as aforesaid, shall be valued by the register of wills for the purpose of determining the amount of tax to be collected from such person, body politic, or corporate, under the provisions of this act. Where the property shall pass in trust or otherwise to one or more persons, bodies politic or corporate, for a term of years or greater estate or interest, and with remainder or reversion to one or more other persons, bodies politic, or corporate, the estate or interest of each beneficiary shall be valued separately. The register of wills referred to in this section shall be the register of wills of the county where letters testamentary or of administration, have been granted on the estate of the donor, grantor, deviser or intestate from whom the property aforesaid shall have passed as set forth in section 1 of this act, but if no such letters have been granted then the said register shall be the register of wills of the county in which such property is, or is situated. Such valuation shall be made within thirteen months of the death of the donor, grantor, deviser, or intestate aforesaid. The register shall give one week's notice to the parties in interest by posting the same in his office or in some other manner as he shall deem proper, of the time when he will hear any of said parties relative to such valuation. The said register shall have power to summon witnesses and take testimony relative to the valuation aforesaid.

In all cases there shall be an appeal from the determination of the register as to the amount of taxes to be paid under the provisions of this act, to the orphans court of the county of said register; the said appeal must be taken to the term of the said orphans court next following the deter-

mination of the register as to the valuation aforesaid. The decisions of the said orphans court shall be final.

The costs of the appeal shall in all cases be paid by the appellant and shall be taxed by the court against said appellant. It shall be the duty of the register to notify the attorney general or his deputy for the county of said register's jurisdiction, whenever any such appeal shall be taken and it shall be the duty of the attorney general to represent the state in person or by one of his deputies in the hearing on the appeal.

Every estate and interest in real and personal property shall be charged with a lien for the amount of the taxes for which such estate or interest is liable under the provisions of this act, whether such estate or interest be held at the time the tax is determined, by the first taker thereof, his heirs, assigns or any other persons, and such a lien shall not be discharged until the tax shall be paid in full. It shall be the duty of the executor or administrator of the donor, grantor, deviser or intestate from whom any property shall pass as set forth in section 1 of this act, to collect the taxes determined in accordance with the provisions of this section, to be due and payable on account of said property or any estate or interest therein, from the parties liable to pay said tax, or their legal representative. Such collection shall be made within thirty days after the amount of the tax has been determined in accordance with the provisions of this section, provided that the right of possession or enjoyment of the property, estate or interest taxed, shall then have accrued, otherwise such collection shall be made within thirty days after such right of possession or enjoyment shall accrue. If there shall be no executor or administrator as aforesaid at such time, it shall be the duty of the register of wills to appoint some suitable person as administrator. If the owner of any estate or interest subject to the payment of a tax under the provisions of this act shall refuse or neglect to pay said tax to the executor or administrator aforesaid, within the time prescribed for the collection thereof as hereinbefore set forth, then the executor, or administrator aforesaid shall apply to the orphans court of said county, and it shall be the duty of said court to grant an order authorizing and directing said executor or administrator to sell for cash, upon the usual notice, the said estate or interest, or so much thereof as may be necessary to pay said tax and all expenses of such sale and the commissions of the executor or administrator thereon. The said order, with the proceedings of the executor or administrator therein, shall be returned to the next term of the said orphans court, and if the return aforesaid be approved by the court, the executor or administrator making such sale shall execute and deliver to the purchaser a deed for so much of said estate or interest as was sold, and such deed shall vest in the purchaser the title thereto.

Whenever any legacy taxable under the provisions of this act, is charged upon land, the holder of said land shall pay the same to the executor or administrator in order that said executor or administrator may pay the taxes due thereon.

In case any property subject to the provisions of this act shall be held in trust, it shall be the duty of the trustees to pay the taxes imposed under this act, to the executor or administrator of the donor, grantor or deviser



from whom the property shall have passed as set forth in section 1 hereof, and if there shall be no such executor or administrator then said trustees shall pay the said taxes to the register of wills of the proper county. It shall be the duty of every executor or administrator within two months after the granting of letters testamentary or administration, to file in the office of the register of wills of the county in which such letters have been granted, a statement in writing, setting forth a general description of every parcel of real estate in this state of which his decedent died seised, and the name of each party entitled to any estate or interest in any parcel of said real estate and the relationship, if any, of said party, to the decedent. Said statement shall be supported by the oath or affirmation of said executor or administrator that the facts therein contained are true according to his best information and belief. Every such statement shall be recorded by the register of wills in a separate book to be kept by him for that purpose and which shall be known as the "Inheritance and Succession Docket," and shall be duly indexed. Whenever any parcel of real property or any estate or interest therein described in the statement of the executor or administrator aforesaid, shall be subject to tax under the provisions of this act, the register of wills shall make an entry in the docket aforesaid, of the amount of the tax determined by him as hereinbefore set forth, to be against said parcel and every estate and interest therein, and in the event of an appeal to the orphans court as aforesaid, shall further set down in said docket the amount of the tax aforesaid as fixed by said court. When any tax as aforesaid shall be paid and discharged, the said register shall make a note thereof in the said docket. It shall be the duty of the state treasurer from time to time to examine every such docket as aforesaid, and to notify the attorney general of any failure on the part of any register of wills or of any executor or administrator to perform the duties imposed upon them by this act. The attorney general shall thereupon take proper proceedings against the party or parties delinquent. All taxes imposed under the provisions of this act shall be for the use of the state.

If for any cause there shall be no executor or administrator to receive a tax imposed under the provisions of this act, the party liable for said tax shall have the right to pay the same direct to the register of wills of the proper county and such payment shall operate as a discharge of said tax. (Laws 1909, p. 515.)

#### § 484. Liability of Executor and Sureties.

Sec. 4. The bond of an executor or administrator shall be liable for all money he may receive for taxes, or for the proceeds of the sale of any estate or interest received by him under this act, and if any executor or administrator shall fail to perform any of the duties imposed upon him under the provisions of this act, the register of wills granting the letters of administration may revoke the same, and his bond shall be liable, and the same proceedings shall be had as if his administration had been revoked for any other cause. The powers and duties of an administrator de bonis non, or de bonis non with the will annexed, shall be the same, under this act, as an executor or administrator, and he shall be subject to the same liabilities. (Laws 1909, p. 519.)

**§ 485. Payment by Executor to Register of Wills.**

Sec. 5. Every executor or administrator collecting the tax aforesaid by sale of any estate or interest as aforesaid, shall pay the tax so collected to the register of wills of the proper county. (Laws 1909, p. 519.)

**§ 486. Receipts for Payment of Tax.**

Sec. 6. Every register of wills receiving any tax under the provisions of this act, shall give the person paying the same, duplicate receipts therefor, one of which shall be forwarded by the person so paying as aforesaid, to the state treasurer, to be by him preserved, and either of said duplicate receipts shall be evidence in suits upon the bond of said register to recover the taxes so by him received. (Laws 1909, p. 519.)

**§ 487. Duty of Register of Wills to Pay Over Money and Make Returns—  
Commissions.**

Sec. 7. It shall be the duty of the several registers of wills in the state, to make returns, under oath to the state treasurer, on the first days of January, April, July and October, in each year, or within thirty days thereafter, of all sums of money received by them as taxes under the provisions of this act, the first return to be made on the first day of July next after the passage of this act, and to pay over to said state treasurer the amounts so by them received respectively, at the time of making such returns, for which they shall be allowed a commission of one-half of one per centum on the amount so paid over, and if any register of wills shall fail to pay over, as required by this section, the state treasurer shall give notice to the attorney general of the state, whose duty it shall be to institute suit on the official bond of such register of wills, for the use of the state, to recover the amount due from such register of wills, and in such suit the amount appearing to be due, with interest thereon, and costs, shall be recovered, which recovery shall be evidence of misbehavior in office, and upon conviction thereof such register of wills shall be removed from office.

The official bond of every register of wills of this state, now or hereafter appointed, shall be deemed and held to embrace and include the faithful performance by such register of all and every the duties imposed upon him by this act. Approved March 26, A. D. 1909. (Laws 1909, p. 519.)

## CHAPTER XXVIII.

## IDAHO STATUTE.

*(Laws of 1907, pp. 558-571.)*

- § 488. Transfers Subject to Tax—Market Value—Lien.
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- § 511. Enforcement of Lien of Tax—Quieting Title.
- § 512. Repeal of Conflicting Acts.

**§ 488. Transfers Subject to Tax—Market Value—Lien of Tax.**

Section 1. All property which shall pass, by will or by the intestate laws of this state, from any person who may die seised or possessed of the same while a resident of this state, or if such decedent was not a resident of this state at the time of death, which property, or any part thereof, shall be within this state, or any interest therein, or income therefrom, which shall be transferred by deed, grant, sale, or gift, made in contemplation of the death of the grantor, vendor or bargainor, or intended to take effect in possession or enjoyment after such death, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property, or to the income thereof, shall be and is subject to a tax hereinafter provided for, to be paid to the treasurer of the proper county, as hereinafter directed, for the benefit of the

general fund of this state, to be used for all the purposes for which said fund is available. And the county treasurer shall, upon the receipt of said tax, pay the same to the state treasurer and take duplicate receipts thereof, one of which the county treasurer shall retain, and transmit the other to the state auditor, and receive from him credit for the amount thereof on his account; and such tax shall be and remain a lien upon the property passed or transferred until paid and the person to whom the property passes or is transferred and all administrators, executors, and trustees of every estate so transferred or passed shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. The tax so imposed shall be upon the market value of such property at the rates hereinafter prescribed and only upon the excess over the exemptions hereinafter granted. (Laws 1907, p. 558.)

#### § 489. Power of Appointment.

Sec. 2. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure. (Laws 1907, p. 559.)

#### § 490. Classification of Beneficiaries—Tax Rates on Estates Under \$25,000.

Sec. 3. When the property or any beneficial interest therein so passed or transferred exceeds in value the exemption hereinafter specified and shall not exceed in value twenty-five thousand dollars the tax hereby imposed shall be:

(1) Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal issue, lineal ancestor of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per centum of the clear value of such interest in such property.

(2) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife or widow of a son, or the husband of a daughter of

the decedent, at the rate of one and one-half per centum of the clear value of such interest in such property.

(3) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother or a descendant of a brother or sister of the father or mother of the decedent, at the rate of three per centum of the clear value of such interest in such property.

(4) Where the person or persons entitled to any beneficial interests in such property shall be the brother or sister of the grandfather or grandmother or a descendant of the brother or sister of the grandfather or grandmother of the decedent, at the rate of four per centum of the clear value of such interest in such property.

(5) Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear value of such interest in such property. (Laws 1907, p. 559.)

#### § 491. Rates of Taxation on Estates Over \$25,000.

Sec. 4. The foregoing rates in section three are for convenience termed the primary rates. When the market value of such property or interest exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(1) Upon all in excess of \$25,000 and up to \$50,000, one and one-half times the primary rates.

(2) Upon all in excess of \$50,000 and up to \$100,000, two times the primary rates.

(3) Upon all in excess of \$100,000 and up to \$500,000, two and one-half times the primary rates.

(4) Upon all in excess of \$500,000, three times the primary rates. (Laws 1907, p. 560.)

#### § 492. Exemptions from Taxation.

Sec. 5. The following exemptions from the tax are hereby allowed:

(1) All property transferred to societies, corporations, and institutions now or hereafter exempted by law from taxation, or to any public corporation or to any society, corporation, institution, or association of persons engaged in or devoted to any charitable, benevolent, educational, public or other like work (pecuniary profit not being its object or purpose), or to any person, society, corporation, institution, or association of persons in trust for or to be devoted to any charitable, benevolent, educational, or public purpose, by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income thereof shall be exempt.

(2) Property of the clear value of ten thousand dollars transferred to the widow or to a minor child of the decedent, and of four thousand dollars transferred to each of the other persons described in the first subdivision of section 3 shall be exempt.

(3) Property of the clear value of two thousand dollars transferred to each of the persons described in the second subdivision of section 2 shall be exempt.

(4) Property of the clear value of one thousand five hundred dollars transferred to each of the persons described in the third subdivision of section 3 shall be exempt.

(5) Property of the clear value of one thousand dollars transferred to each of the persons described in the fourth subdivision of section 3 shall be exempt.

(6) Property of the clear value of five hundred dollars transferred to each of the persons and corporations described in the fifth subdivision of section 3 shall be exempt. (Laws 1907, p. 561.)

**§ 493. Estates for Years or Life—Remainders and Contingent Interests.**

Sec. 6. When any grant, gift, legacy or succession upon which a tax is imposed by section one of this act shall be an estate, income or interest for a term of years, or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent, and the market value thereof determined, in the manner provided in section fourteen of this act, and the tax prescribed by this act shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid; provided, that the person or persons, or body politic or corporate, beneficially interested in the property chargeable with said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case such person or persons, or body politic or corporate, shall execute a bond to the people of the state of Idaho, in a penalty of twice the amount of the tax arising upon personal estate, with such sureties as the said probate court may approve, conditioned for the payment of said tax, and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the county clerk of the proper county; provided, further, that such person shall make a full and verified return of such property to said court, and file the same in the office of the county recorder within one year from the death of the decedent, and within that period enter into such security, and renew the same every five years. (Laws 1907, p. 561.)

**§ 494. Bequests to Executor or Trustee.**

Sec. 7. Whenever a decedent appoints or names one or more executors or trustees, and makes a bequest or devise of property to them in lieu of commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequest, devise, or residuary legacies exceed what would be a reasonable compensation for their services, such excess over and above the exemptions herein provided for shall be liable to said tax; and the superior court in which the probate proceedings are pending shall fix the compensation. (Laws 1907, p. 562.)

**§ 495. Time of Payment of Tax—Interest and Discount.**

Sec. 8. All taxes imposed by this act, except as hereinafter provided, shall be due and payable at the death of the person rendering such property subject to such taxation, and interest, at the same rate as is now provided by law for delinquent taxes, shall be charged and collected thereon for such time as said tax is not paid; provided, that if said tax is paid within one year from the accruing thereof no interest shall be charged or collected thereon, and if said tax is paid within six months from the accruing thereof a discount of five per centum shall be allowed and deducted from said tax; provided, further, that if by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, the estate of the decedent or any part thereof cannot be settled up at the end of the year from his or her decease, the probate court, or the judge thereof, may make necessary extensions of time for the payment of such taxes, but no single extension shall exceed one year, and in such cases only six per centum per annum shall be charged upon the said tax from the death of the decedent to the expiration of the period for which the extension of time was granted, after which interest, at the same rate as is now provided by law for delinquent taxes shall be charged; and in all such cases the tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid, and the executors, administrators or trustees shall give a bond, to the people of the state of Idaho, in a penalty of three times the amount of the said tax, with such sureties as the probate judge of the proper county may approve, conditioned for the payment of said tax, and interest thereon, at the expiration of such period, which bond shall be filed in the office of said probate judge. (Stats. 1907, p. 562.)

**§ 496. Collection of Tax by Executor or Trustee.**

Sec. 9. Any administrator, executor, or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator, or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator, or trustee shall retain the tax upon the whole amount; but if it be not in money he shall make application to the probate court to make an apportionment, if the case requires it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require. (Laws 1907, p. 563.)

**§ 497. Sale of Property to Pay Tax.**

Sec. 10. All executors, administrators, and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay

said tax, in the same manner as they may be enabled by law to do for the payment of debts of the estate, and the amount of said tax shall be paid as hereinafter directed. (Laws 1907, p. 563.)

**§ 498. Payment to County Treasurer—Duty of Controller—Receipts.**

Sec. 11. Every sum of money retained by an executor, administrator, or trustee, or paid into his hands, for any tax on property, shall be paid by him within thirty days thereafter, to the treasurer of the county in which the probate proceedings are pending, and the said treasurer shall give, and every executor, administrator, or trustee shall take, duplicate receipts for such payment, one of which receipts said executor, administrator, or trustee shall immediately send to the state auditor, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and said auditor shall seal said receipt with the seal of his office, and countersign the same, and return it to the executor, administrator, or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; and an executor, administrator, or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed, unless he shall produce a receipt so sealed and countersigned by the state auditor, or a copy thereof, certified by him, and file the same with the court. (Laws 1907, p. 564.)

**§ 499. Refunding Excess Payments.**

Sec. 12. Whenever any debts shall be proven against the estate of a decedent after the payment of legacies or distribution of property from which the said tax has been deducted or upon which it has been paid, and a refund is made by the legatee, devisee, heir, or next of kin, a proportion of the tax so deducted or paid shall be repaid to him by the executor, administrator, or trustee, if the said tax has not been paid to the county treasurer or to the state auditor, or by them, if it has been so paid. (Laws 1907, p. 564.)

**§ 500. Transfer or Delivery of Stocks, Securities, Deposits—Notice Thereof.**

Sec. 13. If a foreign executor, administrator, or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets of a decedent, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the county treasurer at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securi-



ties, deposits or other assets of the estate of a nonresident decedent including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution, making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and penalty which may thereafter be assessed on account of the delivery or transfer of such securities, deposits, or other assets including the shares of the capital stock of or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this act, unless the county treasurer consents thereto in writing. And it shall be lawful for the said county treasurer, personally, or by representative, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice and to allow such examination, and to retain a sufficient portion or amount to pay such tax and penalty as herein provided, shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of two times the amount of the tax and penalty due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution, making the delivery or transfer; and the payment as herein provided shall be enforced in an action brought in accordance with the provisions of section 18 of this chapter. (Laws 1907, p. 564.)

#### § 501. Appraisers and Appraisement.

Sec. 14. When the value of any inheritance, devise, bequest, or other interest subject to the payment of said tax is uncertain, the probate court in which the probate proceedings are pending, on the application of any interested party, or upon its own motion, shall appoint some competent person as appraiser, as often as and whenever occasion may require, whose duty it shall be forthwith to give such notice, by mail, to all persons known to have or claim an interest in such property, and to such persons as the court may by order direct, of the time and place at which he will appraise such property, and at such time and place to appraise the same and make a report thereof, in writing, to said court, together with such other facts in relation thereto as said court may by order require to be filed with the clerk of said court; and from this report the said court shall, by order, forthwith assess and fix the market value of all inheritances, devises, bequests, or other interests, and the tax to which the same is liable, and shall immediately cause notice thereof to be given, by mail, to all parties known to be interested therein; and the value of every future or contingent or limited estate, income, or interest shall, for the purposes of this act, be determined by the rule, method, and standards of mortality and of value that are set forth in the actuaries' combined experience tables of mortality for ascertaining the value of policies of life insurance and annuities, and for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be five per centum per annum; and the

insurance commissioner shall, on the application of said court, determine the value of such future or contingent or limited estate, income, or interest, upon the facts contained in such report, and certify the same to the court, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct. The said appraiser shall be paid by the county treasurer out of any funds that he may have in his hands on account of said tax, on presentation of a sworn itemized account and on the certificate of the court, at the rate of five dollars per day for every day actually and necessarily employed in said appraisement, together with his actual necessary traveling expenses. (Laws 1907, p. 565.)

**§ 502. Appraiser Taking Other Than Regular Fees—Penalty Therefor.**

Sec. 15. Any appraiser appointed by virtue of this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars, or imprisoned in the county jail ninety days, or both, and in addition thereto the court shall dismiss him from such service. (Laws 1907, p. 566.)

**§ 503. Nonresidents—Jurisdiction of Court.**

Sec. 16. The probate court in the county in which is situate the real property of a decedent who was not a resident of the state, or if there be no real property, then in the county in which any of the personal property of such nonresident is situate, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, except as hereinafter provided, and the court first acquiring jurisdiction hereunder shall retain the same, to the exclusion of every other. (Laws 1907, p. 566.)

**§ 504. Citation to Delinquent Taxpayer.**

Sec. 17. If it shall appear to the probate court, or judge thereof, that any tax accruing under this act has not been paid according to law, it shall issue a citation, citing the persons known to own any interest in or part of the property liable to the tax or any person or corporation liable under the law for the payment of said tax to appear before the court on a day certain, not more than ten weeks after the date of such citation, and show cause why said tax should not be paid. The service of such citation, and the time, manner, and proof thereof, and the hearing and determination thereon, and the enforcement of the determination or decree, shall conform as near as may be to the provisions now established by laws of this state in similar proceedings in the probate courts; and the clerk of the court shall, upon the request of the county attorney or treasurer of the county, furnish,

without fee, one or more transcripts of such decrees, and the same shall be docketed and filed by the county recorder of any county in the state, without fee, in the same manner and with the same effect as provided by section 4460, Revised Statutes of Idaho, 1887, for filing a transcript of an original docket. (Laws 1907, p. 567.)

**§ 504a. Proceedings by District Attorney Against Delinquent.**

Sec. 18. Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the persons interested in the property liable to said tax to pay the same, he shall notify the county attorney of the proper county, in writing, of such failure to pay such tax, and the county attorney so notified, if he have probable cause to believe a tax is due and unpaid, shall prosecute the proceeding in the probate court, as provided in section eighteen of this act, for the enforcement and collection of such tax. (Laws 1907, p. 567.)

**§ 505. Entries, Records and Reports of County Clerk.**

Sec. 19. The secretary of state shall furnish to each probate judge a book, which shall be a public record, and in which he shall enter the name of every decedent upon whose estate an application has been made to the probate court for the issuance of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent, the estimated value of his real and personal property, the names, places of residence, and relationship to him of his heirs at law, the names and places of residence of the legatees and devisees, in any will of any such decedent, the amount of each legacy and the estimated value of any real property devised therein, and to whom devised. These entries shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of the decedent. The probate judge shall also enter in such book the amount of personal property of any such decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by any appraiser appointed by the court under this statute, and the value of annuities, life estates, terms of years, and other property of such decedent, or given by him in his will or otherwise, as fixed by the probate court, and the tax assessed thereon, and the amounts of any receipts for payment of any tax on the estate of such decedent under this statute filed with him. The probate judge shall, on the first day of January, April, July and October of each year make a report, in duplicate, upon forms to be furnished by the state auditor, containing all the data and matters required to be entered in such book, and also of the property from which, or the party from which, he has reason to believe the tax under this act is due and unpaid, one of which shall be immediately delivered to the county treasurer and the other transmitted to the state auditor. (Laws 1907, p. 567.)

**§ 506. Costs of Proceedings Against Delinquent.**

Sec. 20. Whenever the probate court of any county shall certify that there was probable cause for issuing a citation and taking the proceedings specified in section eighteen of this act, the state treasurer shall pay, or allow, to the treasurer of any county, all expenses incurred for services of citation, and his other lawful disbursements that have not otherwise been paid. (Laws 1907, p. 568.)

**§ 507. Payment by County to State Treasurer.**

Sec. 21. The treasurer of each county shall collect and pay the state treasurer all taxes that may be due and payable under this act, who shall give him a receipt therefor; of which collection and payment he shall make a report, under oath, to the state auditor, between the first and fifteenth days of May and December of each year, stating for what estate paid, and in such form and containing such particulars as the state auditor may prescribe; and for all such taxes collected by him and not paid to the state treasurer by the first day of June and January of each year he shall pay interest at the rate of ten per centum per annum. (Laws 1907, p. 568.)

**§ 508. Furnishing Copy of Receipts to Persons Applying Therefor.**

Sec. 22. Any person, or body politic or corporate, shall, upon the payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county, or a copy of the receipt, at his option, that may have been given by said treasurer for the payment of any tax under this act, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any decedent may have died seised, said tax has been paid, and by whom paid, and whether or not it is in full of said tax; and said receipt may be recorded in the recorder's office in the county in which said property is situated, in a book to be kept by said recorder for such purpose, which shall be labeled "inheritance tax." (Laws 1907, p. 569.)

**§ 509. Refusal of Officers to Discharge Duties—Penalty Therefor.**

Sec. 23. Every officer who fails or refuses to perform, within a reasonable time, any and every duty required by the provisions of this act, or who fails or refuses to make and deliver within a reasonable time any statement or record required by this act, shall forfeit to the state of Idaho the sum of one thousand dollars, to be recovered in an action brought by the attorney general in the name of the people of the state on the relation of the state auditor. (Laws 1907, p. 569.)

**§ 510. Definitions of Words Used in Statute.**

Sec. 24. The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor, or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees,

vendees, or successors, and shall include all personal property within or without the state. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described. The word "decendent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor. (Laws 1907, p. 569.)

**§ 511. Enforcement of Lien of Tax—Quieting Title.**

Sec. 25. In all cases where any tax has become or shall hereafter become a lien upon any property under or by virtue of any of the provisions of this act the county attorney of the county in which the estate of the decedent mentioned in this act is being administered or has been administered in probate proceedings, may, whenever any property of said estate has been distributed without the payment to the state of all or any part of the taxes payable on account thereof under this act, bring and prosecute an action or actions in the name of the state as plaintiff, for the purpose of enforcing such lien or liens against all or any of the property subject thereto. In any such action the owner of any property or of any interest in property against which the lien of any such tax is sought to be enforced, and any predecessor in interest of any such owner whose title or interest was derived through any such decedent by will or succession or by decree of distribution of the estate of such decedent, and any lienor or encumbrancer subsequent to the lien of such tax may be made a party defendant. The enumeration in this section of the persons who may be made defendants shall not be deemed to be exclusive, but the joinder or nonjoinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases.

(a) Actions may be brought against the state for the purpose of quieting title to any property, against the lien or claim of lien of any tax or taxes under this act, or for the purpose of having it determined that any property is not subject to any lien for taxes under this act. In any such action, the plaintiffs may be any administrator or executor of the estate or will of any decedent, whether the said estate shall have been fully administered and the estate settled and closed or not, and any heir, legatee or devisee of any such decedent, or trustee of the estate or any part of the estate of such decedent, or distributee of the estate or any part of the estate of any such decedent, and any assignee, grantee or successor in interest of any of such persons, and all or any other persons who might be made parties defendant in any action brought by the state under the provisions of this section, and notwithstanding that all or any of the persons enumerated in this section shall or may have assigned, granted, conveyed or otherwise parted with all or any interest in or title to the property, or any thereof, involved in any such claim of lien before the commencement of such action. All or any of the persons in this action enumerated may be joined or united as parties plaintiff. The enumeration in this section of the persons who may be made parties shall not be deemed to be exclusive, but the joinder or

nonjoinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases. In all cases any person who might properly be a party plaintiff in any such action who refuses to join as plaintiff may be made a defendant.

(b) All actions under this section shall be commenced in the district court of the county in which is situated any part of any real property against which any lien is sought to be enforced, or to which title is sought to be quieted against any lien, or claim of liens.

(c) Service of summons in the actions brought against the state shall be made on the secretary of state and on the county attorney of the county in which the estate of the decedent mentioned herein is being administered, or has been administered in probate proceedings, and it shall be the duty of said county attorney to defend all such actions.

(d) The procedure and practice in all actions brought under this section, except as otherwise provided in this act, shall be governed by the provisions of the Code of Civil Procedure in relation to civil actions, so far as the same shall or may be applicable, including all provisions relating to motions for new trials and appeals.

(e) The remedies provided in this section shall be in addition to and not exclusive of any remedies provided in the sections preceding this section. (Laws 1907, p. 569.)

#### § 512. Repeal of Conflicting Acts.

Sec. 26. All acts and parts of acts in conflict with this act are hereby repealed. Approved March 16, 1907, (Stats. 1907, p. 571.)

## CHAPTER XXIX.

## ILLINOIS STATUTE.

(*Laws of 1905, p. 301; Rev. Stats. 1909, p. 1897.*)

- § 514. Transfers Subject to Tax—Rates—Exemptions.
- § 515. Estates for Years or for Life and Remainders.
- § 516. Time for Payment—Interest and Discount—Bond for Payment.
- § 517. Collection of Tax by Executor.
- § 518. Liability of Executor—Sale of Property to Pay Tax.
- § 519. Payment by Executor to County Treasurer—Receipts and Vouchers.
- § 520. Executor to Give Notice to County Treasurer of Transfers.
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- § 522. Transfer or Delivery of Stocks, Securities and Deposits—Notice.
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- § 526. Appraiser Receiving Illegal Fees—Penalty.
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- § 543. Certified Copies of Papers.
- § 544. Repeal of Other Statutes.

§ 514. Transfers Subject to Tax—Rate of Taxation—Exemptions.

Sec. 1. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom, in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted, in the following cases:

When the transfer is by will or by the intestate laws of this state, from any person dying, seized or possessed of the property while a resident of the state.

When the transfer is by will or intestate laws of property within the state and the decedent was a nonresident of the state at the time of his death.

When the transfer is of property made by a resident, or by a nonresident when such nonresident's property is within this state, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death. When any such person, institution or corporation becomes beneficially entitled in possession or expectancy to any property or the income therefrom, by any such transfer, whether made before or after the passage of this act.

Whenever any person, institution or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment, when made, shall be deemed a taxable transfer under the provisions of this act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son, or the husband of the daughter, or any child or children adopted as such in conformity with the laws of the state of Illinois, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent; provided, however, such relationship began at or before said person's fifteenth birthday and was continuous for said ten years thereafter: And, provided, also, that the parents of such person so standing in such relation shall be deceased when such relationship commenced, or to any lineal descendant of such decedent born in lawful wedlock. In every such case the rate of tax shall be two dollars on every one hundred dollars of the clear market value of such property received by each person, when the amount so received exceeds in amount the sum of one hundred thousand dollars, and one dollar on each one hundred dollars of the clear market value of such property received by each person when the amount so received is one hundred thousand dollars or less; and at and after the same rates, respectively, for every less amount; provided, that any gift, legacy, inheritance, transfer, appointment or interest which may be valued at a less sum than twenty thousand dollars shall not be subject to any such duty or taxes, and the tax is to be levied in the above cases only upon the excess of twenty thousand dollars received by each person. When the beneficial interest to any property



or income therefrom shall pass to or for the use of any uncle, aunt, niece or nephew or any lineal descendant of the same, in any such case the rate of such tax shall be four dollars on every one hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person when the amount so received exceeds the sum of twenty thousand dollars; and two dollars on every one hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person when the amount so received is twenty thousand dollars or less. In all other cases the rate shall be as follows: On each and every one hundred dollars of the clear market value of all property and at the same rate for any less amount; on all transfers of ten thousand dollars and less, three dollars; on all transfers over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on all transfers over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars; on all transfers over fifty thousand dollars and not exceeding one hundred thousand dollars, six dollars; and on all transfers over one hundred thousand dollars, ten dollars; provided, that any gift, legacy, inheritance, transfer, appointment or interest which may be valued at a less sum than five hundred dollars shall not be subject to any duty or tax. (Rev. Stats. 1909, p. 1897.)

#### § 515. Estates for Years or for Life and Remainders.

Sec. 2. When any property or interest therein or income therefrom shall pass or be limited for the life of another, or for a term of years, or to terminate on the expiration of a certain period the property of the decedent so passing shall be appraised immediately after the death of the decedent, and the value of the said life estate, term of years or period of limitation shall be fixed upon mortality tables, using the interest rate or income rate of five per cent; and the value of the remainder in said property so limited shall be ascertained by deducting the value of the life estate, term of years or period of limitation from the fair market value of the property so limited, and the tax on the several estate or estates, remainder or remainders, or interests shall be immediately due and payable to the treasurer of the proper county, together with interest thereon, and said tax shall accrue as provided in section three (3) of this act, and remain a lien upon the entire property limited until paid; provided, that the person or persons, body politic or corporate, beneficially interested in property chargeable with said tax, elect not to pay the same until they shall come into actual possession or enjoyment of such property, then in that case said person or persons, or body politic or corporate, shall give bond to the people of the state of Illinois in a penal sum three times the amount of the tax arising from such property, limited with such sureties as the county judge may approve, conditioned for the payment of the said tax and interest thereon at such time or period as they or their representatives may come into the actual possession or enjoyment of said property; which bond shall be filed in the office of the county clerk of the proper county; provided, further, that such person or persons, body politic or corporate, shall make a full verified return

of said property to said county judge and file the same in his office within one year from the death of the decedent, with the bond and sureties as above provided; and, further, said person or persons, body politic or corporate shall renew said bond every five years after the date of the death of decedent. (Rev. Stats. 1909, p. 1898.)

**§ 516. Time for Payment—Interest and Discount—Bond for Payment.**

Sec. 3. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable, at the death of the decedent, and interest at the rate of six per cent per annum shall be charged and collected thereon for such time as said taxes are not paid; provided, that if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per cent shall be allowed and deducted from said tax; and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section 2 of this act, for the payment of said tax, together with interest. (Rev. Stats. 1909, p. 1898.)

**§ 517. Collection of Tax by Executor.**

Sec. 4. Any administrator, executor or trustee having any charge or trust in legacies or property for distribution subject to the said tax shall deduct the tax therefrom, or if the legacy or property be not money he shall collect a tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate the heir or devisee before paying the same shall deduct said tax therefrom, and pay the same to the executor, administrator or trustee, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the said payment of said legacies might be enforced, if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money he shall make application to the court having jurisdiction of his accounts, to make an apportionment if the case requires it of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require. (Rev. Stats. 1909, p. 1898.)

**§ 518. Liability of Executor—Sale of Property to Pay Tax.**

Sec. 5. All executors, administrators and trustees shall be personally liable for the payment of taxes and interest, and where proceedings for collection of taxes assessed be had, said executors, administrators and trustees shall be personally liable for the expenses, costs and fees of collection. They shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled to do by law, for the payment of duties of their testators and in-

testates, and the amount of said tax shall be paid as hereinafter directed. (Rev. Stats. 1909, p. 1899.)

**§ 519. Payment by Executor to County Treasurer—Receipts and Vouchers.**

Sec. 6. Every sum of money retained by any executor, administrator or trustee, or paid into his hands for any tax on any property, shall be paid by him within thirty days thereafter to the treasurer of the proper county, and the said treasurer or treasurers shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of said payments, one of which receipts he shall immediately send to the treasurer, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; but the executor, administrator or trustee shall not be entitled to credit in his accounts or be discharged from liability for such tax unless he shall procure a receipt so sealed and countersigned by the treasurer and a copy thereof certified by him. (Rev. Stats. 1909, p. 1899.)

**§ 520. Executor to Give Notice to County Treasurer of Transfers.**

Sec. 7. Whenever any of the real estate of which any decedent may die seised shall pass to any body politic or corporate, or to any person or persons, or in trust for them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof in writing to the treasurer of the county where said real estate is situated, within six months after they undertake the execution of their expected duties, or if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge. (Rev. Stats. 1909, p. 1899.)

**§ 521. Refunding Excess Payments.**

Sec. 8. Whenever debts shall be proved against the estate of the decedent after distribution of legacies from which the inheritance tax has been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator if the said tax has not been paid into the state or county treasury, or by the county treasurer if it has been so paid. (Rev. Stats. 1909, p. 1899.)

**§ 522. Transfer or Delivery of Stocks, Securities and Deposits—Notice.**

Sec. 9. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligation in this state standing in the name of the decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or nonresident, or belonging to, or standing in the joint

names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the state treasurer and attorney general at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this article, unless the state treasurer and attorney general consent thereto in writing. And it shall be lawful for the state treasurer, together with the attorney general, personally or by representatives, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of one thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in an action brought by the state treasurer in any court of competent jurisdiction. (Rev. Stats. 1909, p. 1899.)

#### § 523. Refunding of Tax Erroneously Paid.

Sec. 10. When any amount of said tax shall have been paid erroneously to the state treasurer, it shall be lawful for him on satisfactory proof rendered to him by said county treasurer of said erroneous payments to refund and pay to the executor, administrator or trustee, person or persons who have paid any such tax in error the amount of such tax so paid, provided that all applications for the repayment of said tax shall be made within two years from the date of said payment. (Rev. Stats. 1909, p. 1900.)

**§ 524. Appraisers and Appraisement.**

Sec. 11. In order to fix the value of property of persons whose estate shall be subject to the payment of said tax, the county judge, on application of any interested party, or upon his own motion shall appoint some competent person as appraiser as often as or whenever occasion may require, whose duty it shall be forthwith to give such notice by mail, to all persons known to have or claim an interest in such property, and to such persons as the county judge, may, by order direct, of the time and place he will appraise such property, and at such time and place to appraise the same at a fair market value, and for that purpose the appraiser is authorized, by leave of the county judge, to use subpoenas for and to compel the attendance of witnesses before him, and to take evidence of such witnesses under oath concerning such property and the value thereof, and he shall make a report thereof and of such value in writing, to said county judge, with the depositions of the witnesses examined and such other facts in relation thereto and to said matters as said county judge may, by order, require to be filed in the office of the clerk of said county court, and from this report the said county judge shall forthwith assess and fix the then cash value of all estates, annuities and life estates or terms of years growing out of said estate, and the tax to which the same is liable, and shall immediately give notice by mail to all parties known to be interested therein. Any person or persons dissatisfied with the appraisement or assessment may appeal therefrom to the county court of the proper county within sixty days after the making and filing of such appraisement or assessment on paying or giving security satisfactory to the county judge to pay all costs, together with whatever taxes shall be fixed by said court. The said appraiser shall be paid by the county treasurer out of any funds he may have in his hands on account of the inheritance tax collected in said appraisement, as by law provided, on the certificate of the county judge, such compensation as such judge may deem just for said appraiser's services as such appraiser, not to exceed ten dollars per day for each day actually and necessarily employed in said appraisement, together with his actual and necessary traveling expenses and disbursements, including such witness fees paid by him. (Rev. Stats. 1909, p. 1900.)

**§ 525. Fees of Clerk—Inheritance Tax Clerk and Attorney.**

Sec. 12. The fees of the clerk of the county court in inheritance tax matters in the respective counties of this state, as classified in the act concerning fees and salaries, shall be as follows:

In counties of the first and second class, for services in all proceedings in each estate before the county judge the clerk shall receive a fee of five dollars. In all such proceedings in counties of the third class, the clerk shall receive a fee of ten dollars. Such fees shall be paid by the county treasurer, on the certificate of the county judge, out of any money in his hands, on account of said tax. In counties of the third class, the attorney general of the state may appoint an attorney, who shall be known as the "inheritance tax attorney," and whose salary shall be not to exceed three thousand dollars per year, payable monthly out of the state treasury upon warrants drawn by the auditor of public accounts, on vouchers approved by the attorney general. In counties of the third class, the clerk of the county court may appoint a clerk in the

office of the clerk of said court, to be known as the "inheritance tax clerk," whose compensation shall be fixed by the county judge, not to exceed fifteen hundred dollars per year, and not to exceed the fee earned in said office in inheritance tax matters, the surplus of such fees over said compensation so fixed to be turned into the county treasury. In addition to the above, the clerk of the county court shall be entitled, in all suits brought for the collection of delinquent inheritance tax, and all contested inheritance tax cases appealed from the county judge to the county court, and in all appeals from the county court to the supreme court, the same fees as are now, or which may hereafter be, allowed by law in suits at law, or in the matter of appeal at law, to or from the county court, which fees shall be taxed as costs and paid as in other cases at law; and in all cases arising under this act, including certified copies of documents or records in his office, for which no specific fees are provided, the clerk of the county court shall charge against and collect from the person applying for, or entitled to such services, or certified copies, the same fees as are now, or which may hereafter be, allowed for similar services or certified copies in said court, and for recording inheritance tax receipts required to be recorded in his office, he shall receive the same fees which now are or hereafter may be allowed by law to the recorder of deeds for recording similar instruments. (Rev. Stats. 1909, p. 1901.)

**§ 526. Appraiser Receiving Illegal Fees—Penalty.**

Sec. 13. Any appraiser appointed by this act, who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors, he shall be fined not less than two hundred and fifty dollars, nor more than five hundred dollars and imprisoned not exceeding ninety days; and in addition thereto the county judge shall dismiss him from such service. (Rev. Stats. 1909, p. 1901.)

**§ 527. Jurisdiction of Court.**

Sec. 14. The county court in the county in which the property is situated of the decedent, who was not a resident of the state or in the county of which the deceased was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the county court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other. (Rev. Stats. 1909, p. 1901.)

**§ 528. Citation to Delinquent Taxpayer.**

Sec. 15. If it shall appear to the county court that any tax accruing under this act has not been paid according to law, it shall issue a summons summoning the persons interested in the property liable to the tax to appear before the court on a day certain, not more than three months after the date of such summons, to show cause why said tax should not be paid. The process, practice and pleadings, and the hearing and determination thereof, and the judgment in said court in such cases shall be the same as those

now provided, or which may hereafter be provided in probate cases in the county courts of this state, and the fees and costs in such cases shall be the same as in probate cases in the county courts of this state. (Rev. Stats. 1909, p. 1902.)

**§ 529. Duty of State Attorney to Collect Tax.**

Sec. 16. Whenever it appears that any tax is due and unpaid under this act, and the persons, institutions or corporations liable for said tax have refused or neglected to pay the same, it shall be the duty of the state's attorney, in counties of the first and second class, and the inheritance tax attorney, in counties of the third class, if he has proper cause to believe a tax is due and unpaid, to prosecute the collection of same in the county court in the proper county, in the manner provided in section fifteen of this act, for the enforcement and collection of such tax; and in every such case said court shall allow as costs in said case, such fees to said attorney as the court may deem reasonable. (Rev. Stats. 1909, p. 1902.)

**§ 530. Statement to County Treasurer of Unpaid Taxes.**

Sec. 17. The county judge and county clerk of each county shall, every three months, make a statement in writing to the county treasurer of the county of the property from which or the party from whom he has reason to believe a tax under this act is due and unpaid. (Rev. Stats. 1909, p. 1902.)

**§ 531. Allowance for Expenses Incurred.**

Sec. 18. Whenever the county judge of any county shall certify that there was probable cause for issuing a summons and taking the proceedings specified in sections 15 and 16 of this act, the state treasurer shall pay or allow to the treasury of any county all expenses incurred for service of summons and his other lawful disbursements that have not otherwise been paid. (Rev. Stats. 1909, p. 1902.)

**§ 532. Record to be Kept in Office of County Judge.**

Sec. 19. The treasurer of the state shall furnish to each county judge a book, in which he shall enter the returns made by appraisers, the cash value of annuities, life estates and terms of years and other property fixed by him, and the tax assessed thereon and the amounts of any receipts for payments thereof filed with him, which books shall be kept in the office of the county judge as a public record. (Rev. Stats. 1909, p. 1902.)

**§ 533. Payment by County Treasurer to State Treasurer—Receipts.**

Sec. 20. The treasurer of each county shall collect and pay to the state treasurer all taxes that may be due and payable under this act, who shall give him a receipt therefor, of which collection and payment he shall make a report under oath to the auditor of public accounts, on the first Monday in March and September of each year, stating for what estate paid, and in such form and containing such particulars as the auditor may prescribe; and for all said taxes collected by him and not paid to the state treasurer

by the first day of October and April of each year, he shall pay interest at the rate of ten per cent per annum. (Rev. Stats. 1909, p. 1902.)

**§ 534. Commissions of County Treasurer.**

Sec. 21. The treasurer of each county shall be allowed to retain two per cent on all taxes paid and accounted for by him under this act in full for his services in collecting and paying the same, in addition to his salary or fees now allowed by law. (Rev. Stats. 1909, p. 1902.)

**§ 535. Receipts for Payment of Tax.**

Sec. 22. Any person or body politic or corporate shall, upon the payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county or the copy of the receipt at his option that may have been given by said treasurer for the payment of any tax under this act, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any deceased may have died seised, said tax has been paid and by whom paid, and whether or not it is in full of said tax; and said receipt may be recorded in the clerk's office of said county in which the property may be situated, in a book to be kept by said clerk for such purpose. (Rev. Stats. 1909, p. 1902.)

**§ 536. Proceedings to Determine Whether Transfer Subject to Tax.**

Sec. 23. When any person interested in any property in this state, which shall have been transferred within the meaning of this act shall deem the same not subject to any tax under this act, he may file his petition in the county court of the proper county to determine whether said property is subject to the tax herein provided, in which petition the county treasurer and all persons known to have or claim any interest in said property shall be made parties. The county court may hear the said cause upon the relation of the parties and the testimony of witnesses, and evidence produced in open court, and, if the court shall find said property is not subject to any tax, as herein provided, the court shall, by order, so determine; but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases. An adjudication by the county court, as herein provided, shall be conclusive as to the lien of the tax herein provided upon said property, subject to appeal to the supreme court of the state by the county treasurer, or attorney general of the state, in behalf of the people, or by any party having an interest in said property. The fees and costs in all cases arising under this section shall be the same as are now or may hereafter be allowed by law in cases at law in the county court. (Rev. Stats. 1909, p. 1903.)

**§ 537. Lien of Tax.**

Sec. 24. The lien of the collateral inheritance tax shall continue until the said tax is settled and satisfied; provided, that said lien shall be limited to the property chargeable therewith; and, provided, further, that all inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to be paid and cease



to be a lien as against any purchaser of real estate. (Rev. Stats. 1909, p. 1903.)

**§ 538. Contingent or Expectant Estates.**

Sec. 25. When property is transferred or limited in trust or otherwise, and the rights, interest or estates of the transferees or beneficiaries are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this article, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred; provided, however, that on the happening of any contingency whereby the said property, or any part thereof is transferred to a person, corporation or institution exempt from taxation under the provisions of the inheritance tax laws of this state, or to any person, corporation or institution taxable at a rate less than the rate imposed and paid, such person, corporation or institution shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person, corporation or institution should pay under the inheritance tax laws, with interest thereon at the rate of three per centum per annum from the time of payment. Such return of over-payment shall be made in the manner provided for refunds under section eight.

Estate or interests in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for the purposes of taxation, upon which said estates or interests in expectancy may have been limited.

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting. (Rev. Stats. 1909, p. 1903.)

**§ 539. Computation of Taxes on Expectant Estates Under Former Statute.**

Sec. 26. The state treasurer, by and with the consent of the attorney general expressed in writing, is hereby empowered and authorized to enter into an agreement with the trustees of any estate in which remainders or expectant estates have been of such a nature, or so disposed and circumstanced that the taxes therein were held not presently payable, or where the interests of the legatees or devisees were not ascertainable under an act to tax gifts, legacies, and inheritances, etc., in force July 1, 1885, and amendments thereto; and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said trustees upon the payment of the taxes provided for in such composition; provided, however, that no such composition shall be conclusive, in favor of said trustees as against the interests of such cestuis que trust as may possess

either present rights of enjoyment, or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto, either personally, when competent, or by guardian. Composition or settlement made or effected under the provisions of this section shall be executed in triplicate, and one copy filed in the office of the state treasurer, one copy in the office of the clerk of the county court wherein the appraisalment was had or the tax was paid, and one copy delivered to the executors, administrators or trustees who shall be parties thereto. (Rev. Stats. 1909, p. 1903.)

**§ 540. Guardian for Person Under Disability.**

Sec. 27. If it appears at any stage of an inheritance tax proceeding that any person known to be interested therein is an infant or person under disability, the county judge may appoint a special guardian of such infant or person under disability. (Rev. Stats. 1909, p. 1904.)

**§ 541. Transfers Exempt from Tax.**

Sec. 28. When the beneficial interests of any property or income therefrom shall pass to or for the use of any hospital, religious, educational, Bible, missionary, tract, scientific, benevolent or charitable purpose, or to any trustee, bishop or minister of any church or religious denomination, held and used exclusively for the religious, educational or charitable uses and purposes of such church or religious denomination, institution or corporation, by grant, gift, bequest or otherwise, the same shall not be subject to any such duty or tax, but this provision shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members. (Rev. Stats. 1909, p. 1904.)

**§ 542. Transfers by Deed, Instrument or Memoranda.**

Sec. 29. When property, or any interest therein or income therefrom, shall pass to or for the use of any person, institution or corporation by the death of another, by deed, instrument or memoranda, such passing shall be deemed a transfer within the meaning of this act, and taxable at the same rates, and be appraised in the same manner and subjected to the same duties and liabilities as any other form of transfer provided in this act. (Rev. Stats. 1909, p. 1904.)

**§ 543. Certified Copies of Papers.**

Sec. 30. On the written request of the county treasurer or county judge, in the county wherein an appraisalment has been initiated, the clerk of the county court and in counties having a probate court, the clerk of the probate court and the recorder of deeds shall furnish certified copies of all papers within their care or custody, or records material in the particular appraisalment, and the said clerk and recorder shall receive the same fee or compensation for such certified copies as they would be entitled by law in other cases, which shall be paid to them by the county treasurer of the proper county, out of moneys in his hands on account of inheritance tax collections, on the presenta-

tion of itemized bills therefor, approved by the county judge of the proper county. (Rev. Stats. 1909, p. 1904.)

**§ 544. Repeal of Other Statutes.**

Sec. 31. That "An act to tax gifts, legacies and inheritances in certain cases, and to provide for the collection of the same," approved June 15, 1895, in force July 1, 1895, as amended by act approved May 10, 1901, in force July 1, 1901, and all laws or parts of laws inconsistent herewith be and the same are hereby repealed; provided, however, that such repeal shall in no wise affect any suit, prosecution or court proceeding pending at the time this act shall take effect, or any right which the state of Illinois may have at the time of the taking effect of this act, to claim a tax upon any property under the provisions of the act or acts hereby repealed, for which no proceeding has been commenced; and all appeals and rights of appeal in all suits pending, or appeals from assessments of tax made by appraisers' reports, orders fixing tax or otherwise existing in this state at the time of the taking effect of this act. (Rev. Stats. 1909, p. 1904.)

## CHAPTER XXX.

## IOWA STATUTE.

(*Supplement Code 1907, pp. 307-314; Laws of 1909, p. 81; Laws of 1911, pp. 50-64.*)

- § 545. Transfers Subject to Tax—Rates—Persons Liable—Lien—Time of Payment.
- § 546. Exemptions from Tax.
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- § 590. Definitions of Terms.
- § 591. Records to be Kept by State Treasurer.
- § 592. Repeal of Conflicting Statutes.

**§ 545. Transfers Subject to Tax—Rates—Persons Liable—Lien—Time of Payment.**

Sec. 1. The estates of all deceased persons, whether they be inhabitants of this state or not, and whether such estate consists of real, personal or mixed property, tangible or intangible, and any interest in, or income from any such estate or property, which property is, at the death of the decedent owner, within this state or is subject to, or thereafter, for the purpose of distribution, is brought within this state and becomes subject to the jurisdiction of the courts of this state, or the property of any decedent, domiciled within this state at the time of the death of such decedent, even though the property of such decedent so domiciled was situated outside of the state, except real estate located outside of the state passing in fee from the decedent owner, which shall pass by will or by the statutes of inheritance of this or any other state or country, or by deed, grant, sale, gift, or transfer made in contemplation of the death of the donor, or made or intended to take effect in possession or enjoyment after the death of the grantor, or donor, to any person, or for the use in trust or otherwise, other than to or for the use of persons, or uses exempt by this act shall be subject to a tax of five per centum; provided, however, that when property or any interest therein shall pass to heirs, devisees or other beneficiaries subject to the tax imposed by this act who are aliens, nonresidents of the United States, the same shall be subject to a tax of twenty per centum of its true value except when such foreign beneficiaries are brothers or sisters of the decedent owner, when the rate of tax to be assessed and collected therefrom shall be ten per centum of the value of the property or interest so passing. Any person beneficially entitled to any property or interest therein because of any such gift, legacy, devise, annuity, transfer or inheritance, and all administrators, executors, referees and trustees, and any such grantee under a conveyance, and any such donee under a gift, and any such legatee, annuitant, devisee, heir or beneficiary, shall be respectively liable for all such taxes to be paid by them respectively. The tax aforesaid shall be for the use of the state, shall accrue at the death of the decedent owner, and shall be paid to the treasurer of state within eighteen months thereafter, except when otherwise provided in this act, and shall be and remain a legal charge against and a lien upon such estate, and any and all of the property thereof from the death of the decedent owner until paid. (Sup. Code 1907, p. 307; Laws 1909, p. 81; Laws 1911, p. 50.)

**§ 546. Exemptions from Tax.**

Sec. 2. The tax imposed by this act shall not be collected,

1st. When the entire estate of the decedent does not exceed the sum of one thousand dollars after deducting the debts as defined in this act.

2d. When the property passes to the husband or wife.

3d. When the property passes to the father, mother, lineal descendant, adopted child, or the lineal descendant of an adopted child of decedent.

4th. When the property passes to educational and religious societies or institutions, public libraries and public art galleries within this state and open to the free use of the public.

5th. Property passing to or for hospitals within this state open to the public, and not operated for gain, or to societies within this state organized for purposes of public charity, including cemetery associations, but not including societies maintained by fees, dues, or assessments in whose benefits the public may not share.

6th. Bequests for the care and maintenance of the cemetery or burial lot of decedent and his family, and bequests not to exceed five hundred dollars in any estate, to or for the performance of a religious service or services by some person regularly ordained, authorized or licensed by any religious society to perform such service to be performed for or in behalf of the testator, or some person named in his last will, provided such person so named is, or would be exempt from the tax imposed by this act.

7th. When the property passes to a municipal or political corporation within this state for a purely public purpose. (Sup. Code 1907, p. 309; Laws 1911, p. 50.)

#### § 547. Deduction of Debts.

Sec. 3. The term "debts" as used in this act shall include, in addition to debts owing by the decedent at the time of his death, the local or state taxes due from the estate in January of the year of his death, a reasonable sum for funeral expenses, court costs, the cost of appraisement made for the purpose of assessing the collateral inheritance tax, the statutory fees of executors, administrators, or trustees estimated upon the appraised value of the property, the amount paid by the executor or administrator for a bond, the attorney fee in a reasonable amount, to be approved by the court, for the ordinary probate proceedings in said estate and no other sum; but said debts shall not be deducted unless the same are approved and allowed by the court within eighteen months from the death of the decedent, as established claims against the estate, unless otherwise ordered by the judge or court of the proper county. (Sup. Code 1907, p. 309; Laws 1911, p. 51.)

#### § 548. Collection of Tax When No Administrator Appointed.

Sec. 4. If upon the death of any person leaving an estate that may be liable to a tax under the provisions of this act, a will disposing of such estate is not offered for probate, or an application for administration made within four months from the time of such decease, the treasurer of state may, at any time thereafter, make application to the proper court, setting forth such fact and praying that an administrator may be appointed, and thereupon said court shall appoint an administrator to administer upon such estate. When the heirs or persons entitled to inherit the property of an estate subject to the tax hereby imposed, desire to avoid the appointment of an administrator as provided in this section, they or one of them shall, before the expiration of four

months from the death of the decedent file under oath the inventories and reports and perform all the duties required by this act, of administrators, including the filing of the lien; proceedings for the collection of the tax when no administrator is appointed, shall conform as nearly as may be to the provisions of this act in other cases. A nonresident of this state shall not be appointed as executor, administrator or trustee of any estate that may be subject to the tax imposed by this act, unless such nonresident first file a bond conditioned upon the payment of all tax, interest and costs for which the estate may be liable, such bond to be signed by not less than two resident freeholders or by an approved surety company and in an amount not less than twenty-five per cent (25%) of the total value of the estate, or of the property within this state if the estate is a foreign estate. (Laws 1911, p. 52.)

**§ 549. Appointment and Qualification of Appraisers.**

Sec. 5. In each county, the court shall annually at the first term of the court therein appoint three competent residents and freeholders of said county, to act as appraisers of all property within its jurisdiction which is charged or sought to be charged with the collateral inheritance tax. Said appraisers shall serve for one year, and until their successors are appointed and qualified. They shall each take an oath to faithfully and impartially perform the duties of the office, but shall not be required to give bond. They shall be subject to removal at any time at the discretion of the court, and the court or judge thereof in vacation, may also in its discretion, either before or after the appointment of the regular appraisers, appoint other appraisers to act in any given case. Vacancies occurring otherwise than by expiration of term, shall be filled by the appointment of the court or by a judge in vacation. No person interested in any manner in the estate to be appraised may serve as an appraiser of such estate. (Laws 1911, p. 52.)

**§ 550. Issuance of Commission to Appraisers.**

Sec. 6. Whenever it appears that an estate or any property or interest therein is or may be subject to the tax imposed by this act, the clerk shall issue a commission to the appraisers, who shall fix a time and place for appraisal, except that if the only interest that is subject to such tax is a remainder or deferred interest upon which the tax is not payable until the determination of a prior estate or interest for life or term of years, he shall not issue such commission until the determination of such prior estate, except at the request of parties in interest who desire to remove the lien thereon. (Laws 1911, p. 52.)

**§ 551. Notice of Appraisal—Returns Filed.**

Sec. 7. It shall be the duty of all appraisers appointed under the provisions of this act, upon receiving a commission as herein provided, to forthwith give notice to the treasurer of state and other persons known to be interested in the property to be appraised, of the time and place at which they will appraise such property, which time shall not be less than ten days from the date of such notice. The notice shall be served in the same manner as is prescribed for the commencement of civil actions, and if not practicable to serve

the notice provided for by statute, they shall apply to the court or a judge thereof in vacation for an order as to notice and upon service of such notice and the making of such appraisement, the said notice, return thereon and appraisement shall be filed with the clerk, and a copy of such appraisement shall at once be filed by the clerk with the treasurer of state. When property is located in more than one county, the appraisers of the county in which the estate is being administered may appraise the whole estate, or those of the several counties may serve for the property within their respective counties or other appraisers be appointed as the district court if in session, or judge thereof in vacation may direct. (Laws 1911, p. 52.)

#### § 552. Objections to Appraisement.

Sec. 8. The treasurer of state or any person interested in the estate or property appraised, may within twenty days thereafter, file objections to said appraisement and give notice thereof as in beginning civil actions, on the hearing of which as an action in equity either party may produce evidence competent or material to the matters therein involved. If upon such hearing the court finds the amount at which the property is appraised is its value on the market in the ordinary course of trade, and the appraisement was fairly and in good faith made, it shall approve such appraisement; but if it finds that the appraisement was made at a greater or less sum than the value of the property in the ordinary course of trade, or that the same was not fairly or in good faith made, it shall set aside the appraisement, appoint new appraisers and so proceed until a fair and good appraisement of the property is made at its value in the market in the ordinary course of trade. The treasurer of state or anyone interested in the property appraised, may appeal to the supreme court from the order of the district court approving or setting aside any appraisement to which exceptions have been filed. Notice of appeal shall be served within sixty days from the date of the order appealed from, and the appeal shall be perfected in the time now provided for appeals in equitable actions. In case of appeal the appellant, if he is not the treasurer of state shall give bond to be approved by the clerk of the court, which bond shall provide that the said appellant and sureties shall pay the tax for which the property may be liable with cost of appeal. If upon the hearing of objections to the appraisement, the court finds that the property is not subject to the tax, the court shall upon expiration of time for appeal, when no appeal has been taken, order the clerk to enter upon the lien book a cancellation of any claim or lien for taxes. If at the end of twenty days from the filing of the appraisement with the clerk, no objections are filed, the appraisement shall stand approved. (Laws 1911, p. 52.)

#### § 553. Appraisement of Property—Market Value—Deduction of Debts.

Sec. 9. Within ninety days after the transfer of any property that may be liable for a tax under the provisions of this act, except as herein otherwise provided, the clerk of the proper county upon his own motion or upon the application of the treasurer of state, county attorney, or person interested in the property, shall cause the property to be appraised as provided herein. If there be an estate or property subject to said tax wherein the records in the clerk's



office do not disclose that there may be a tax due under the provisions of this act, the person or persons interested in the property shall report the matter to the clerk with an application that the property be appraised. The appraised value of the property shall in all cases be its market value in the ordinary course of trade, and in domestic estates the tax shall be calculated thereon after deducting the debts as defined herein; provided, however, that the debt of a domestic estate owing for or secured by property outside of the state, shall not be deducted before estimating the tax, except when the property for which the debt is owing or by which it is secured is subject to the tax imposed by this act, or when the foreign debt exceeds the value of the property securing it or for which it was contracted, then the excess may be deducted provided that satisfactory proof of the value of the foreign property and the amount of such debt is furnished to the treasurer of state. (Laws 1911, p. 53.)

**§ 554. Relief from Appraisement.**

Sec. 10. All estates subject in whole or in part to the tax imposed by this act shall be appraised for the purpose of computing said tax by the regular collateral inheritance tax appraisers; provided, that estates liable for the payment of the inheritance tax upon specific legacies, annuities, bequests of money or other property the value of which may be determined without appraisement, and estates which consist of money, book accounts, bank deposits, notes, mortgages and bonds, need not be appraised by the collateral inheritance tax appraisers if the administrator, executor or trustee or the persons entitled to or claiming such property are willing to charge themselves with the full face value of such bequests or property, together with the interest, earnings or undivided profits which may be due on said properties, at the time of death of the testator or intestate, as the basis for the assessment of said tax, but in all cases the relief from appraisement for the collateral inheritance tax is dependent upon the consent of the treasurer of state, and the subsequent approval thereof by the court or judge thereof in vacation. In the event that the estate has been duly appraised under the ordinary statutes of inheritance or the property has been sold and such appraisement or selling price is accepted by the treasurer of state as satisfactory for collateral inheritance tax purposes, the court or judge thereof in vacation may, upon proper application, relieve the estate from the appraisement by the collateral inheritance tax appraisers; but in order to obtain such relief, the administrator, executor, trustee or other party interested must file an application for relief with the consent of the treasurer of state thereto in the office of the clerk of the court before said clerk issues a commission to the collateral inheritance tax appraisers. The court or judge thereof in vacation may, upon application of the representatives of the estate or parties interested, relieve the estate of the appraisement for collateral tax purposes if it be shown to said court that the market value of the entire estate will not exceed one thousand dollars; provided, that prior to the application to said court or judge the written consent of the treasurer of state to such relief is procured. In all cases where an estate is relieved from an appraisement for collateral inheritance tax purposes, the order granting relief shall be recorded in the clerk's office, and the fact of such relief and reasons therefor shall be duly noted in the decree or order of final settlement made by the court. (Laws 1911, p. 53.)

**§ 555. Appraisement of Deferred Estates in Real Property.**

Sec. 11. When any person, whose estate over and above the amount of his debts, as defined in this act, exceeds the sum of one thousand dollars, shall bequeath or devise any real property to or for the use of persons exempt from the tax imposed by this act, during life or for a term of years, and the remainder to a collateral heir, said property upon the determination of such estate for life or years, shall be appraised at its then actual market value from which shall be deducted the value of any improvements thereon, or betterments thereto, if any, made by the remainderman during the time of the prior estate, to be ascertained and determined by the appraisers and the tax on the remainder shall be paid by such remainderman as provided in the next succeeding section. (Laws 1911, p. 54.)

**§ 556. Estates for Years or for Life and Remainders in Real Property.**

Sec. 12. Whenever any real property of a decedent shall be subject to such tax and there be an estate or interest for life or term of years given to a party other than those especially exempt by this act, the clerk shall cause such property to be appraised at the actual market value thereof, as is provided in ordinary cases, and the party entitled to such estate or interest shall within one (1) year from the death of decedent owner pay such tax, and in default thereof the court shall order such interest in said estate, or so much thereof as shall be necessary to pay such tax and interest, to be sold. Upon the determination of any prior estate or interest, when the remainder or deferred estate or interest or any part thereof is subject to such tax and the tax upon such remainder or deferred interest has not been paid, the person or persons entitled to such remainder or deferred interest shall immediately report to the clerk of the proper court the fact of the determination of the prior estate, and upon receipt of such report, or upon information from any source, of the determination of any such prior estate when the remainder interest has not been appraised for the purpose of assessing such tax, the clerk shall forthwith issue a commission to the collateral inheritance tax appraisers, who shall immediately proceed to appraise the property as provided in like cases in the next preceding section, and the tax upon such remainder interest shall be paid by the remainderman within one (1) year next after the determination of the prior estate. If such tax is not paid within said time the court shall then order said property, or so much thereof as may be necessary to pay such tax and interest, to be sold. (Laws 1911, p. 54.)

**§ 557. Estates for Years or for Life in Personal Property.**

Sec. 13. Whenever any personal property shall be subject to the tax imposed by this act and there be an estate or interest for life or term of years given to one or more persons and remainder or deferred estate to others, the clerk shall cause the property so devised or conveyed to be appraised as provided herein in ordinary estates and the value of the several estates or interests so devised or conveyed shall be determined as provided in section seventeen (17) of this act, and the tax upon such estates or interests as are liable for the tax imposed by this act shall be paid to the treasurer of state from the property appraised or by the persons entitled to such estate or interest within eighteen

(18) months from the death of the testator, grantor, or donor, provided, however, that payment of the tax upon any deferred estate or remainder interest may be deferred until the determination of the prior estate by the giving of a good and sufficient bond as provided in the next succeeding section. (Laws 1911, p. 54.)

**§ 558. Bond to Secure Payment of Tax on Deferred Estates.**

Sec. 14. When in case of deferred estates or remainder interests in personal property or in the proceeds of any real estate that may be sold during the time of a life, term or prior estate, the persons interested who may desire to defer the payment of the tax until the determination of the prior estate, shall file with the clerk of the proper district court a bond as provided herein in other cases, such bond to be renewed every two years until the tax upon such deferred estate is paid. If at the end of any two year period the bond is not promptly renewed as herein provided and the tax has not been paid, the bond shall be declared forfeited, and the amount thereof be forthwith collected. When the estate of a decedent consists in part of real and in part of personal property, and there be an estate for life or for a term of years to one or more persons and a deferred or remainder estate to others, and such deferred or remainder estate is in whole or in part subject to the tax imposed by this act, if the deferred or remainder estates or interests are so disposed that good and sufficient security for the payment of the tax for which such deferred or remainder estates may be liable can be had because of the lien imposed by this act upon the real property of such estate, then payment of the tax upon such deferred or remainder estates may be postponed until the determination of the prior estate without giving bond as herein required to secure payment of such tax, and the tax shall remain a lien upon such real estate until this tax upon such deferred estate or interest is paid. (Laws 1911, p. 55.)

**§ 559. Terms and Conditions of Bonds.**

Sec. 15. All bonds required by this act shall be payable to the treasurer of state and shall be conditioned upon the payment of the tax, interest and costs for which the estate may be liable, and for the faithful performance of all the duties hereby imposed upon and required of the person whose acts are by such bond to be guaranteed, and shall be in an amount equal to twice the amount of the tax interest and costs that may be due, but in no case less than five hundred dollars and must be secured by not less than two resident freeholders or by a fidelity or surety company authorized by the auditor of state to do business in this state. (Laws 1911, p. 55.)

**§ 560. Removal of Property from State—Penalty.**

Sec. 16. It shall be unlawful for any person to remove from this state any property, or the proceeds thereof, that may be subject to the tax imposed by this act, without paying the said tax to the treasurer of state. Any person violating the provisions of this section shall be guilty of a felony and upon conviction shall be fined an amount equal to twice the amount of tax, interest and costs for which the estate may be liable, but in no case less than two hundred dollars and imprisoned as the court shall direct, until the fine is paid.

Provided, however, that the penalty hereby imposed shall not be enforced, if prior to the removal of such property or the proceeds thereof, the person desiring to effect such removal files with the clerk a bond conditioned upon the payment of the tax, interest and costs, as is provided in the preceding section hereof. (Laws 1911, p. 55.)

**§ 561. Value of Annuities, Life, Term, and Deferred Estates.**

Sec. 17. The value of any annuity, deferred estate, or interest, or any estate for life or term of years, subject to the collateral inheritance tax, shall be determined for the purpose of computing said tax by the rule of standards of mortality and of value commonly used in actuaries' combined experience tables as now provided by law. The taxable value of annuities, life or term, deferred or future estates, shall be computed at the rate of four (4) per cent per annum of the appraised value of the property in which such estate or interest exists or is founded. Whenever it is desired to remove the lien of the collateral inheritance tax on remainders, reversions, or deferred estates, parties owning the beneficial interest may pay at any time the said tax on the present worth of such interests determined according to the rules herein fixed. (Laws 1911, p. 56.)

**§ 562. Collection of Tax.**

Sec. 18. It is hereby made the duty of all executors, administrators, trustees, or other persons charged with the management or settlement of any estate subject to the tax provided for in this act, to collect and pay to the treasurer of state the amount of the tax due from any devisee, grantee, donee, heir or beneficiary of the decedent, except in cases where payment of the tax is deferred until the determination of a prior estate in which cases the treasurer of state shall collect the same. Executors, administrators, trustees, or the state treasurer, shall have power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as is now provided by law for the sale of such property for the payment of debts of testators or intestates. The treasurer of state may bring, or cause to be brought in his name of office, suit, for the collection of said tax, interest and costs, against the executor, administrator, or trustee, or against the person entitled to property subject to said tax, or upon any bond given to secure payment thereof, either jointly or severally and obtaining judgment may cause execution to be issued thereon as is provided by statute in other cases. The proceedings shall conform as nearly as may be to those for the collection of ordinary debt by suit. If because of necessary litigation or other unavoidable cause of delay enforced payment of the tax hereby imposed, by suit and execution, would result in loss or be to the detriment of the best interests of the estate, the court may extend the time for the payment of the tax. Such extensions of time shall not be granted except in cases where security is given for payment of the tax, interest and costs. (Laws 1911, p. 56.)

**§ 563. Deduction of Tax from Legacy.**

Sec. 19. Every executor, administrator, referee or trustee having in charge or trust any property of an estate subject to said tax, and which is made pay-

able by him, shall deduct the tax therefrom or shall collect the tax thereon from the legatee or person entitled to said property and pay the same to the treasurer of state, and he shall not deliver any specific legacy or property subject to said tax to any person until he has collected the tax thereon. (Laws 1911, p. 56.)

**§ 564. Account of Executor not Settled Before Tax Paid.**

Sec. 20. No final settlement of the account of any executor, administrator, or trustee shall be accepted or allowed unless it shall show, and the court shall find, that all taxes imposed by the provisions of this act upon any property or interest therein, that is hereby made payable by such executors, administrators or trustees, and to be settled by said account, shall have been paid, and the receipt of the treasurer of state for such tax shall be the proper voucher for such payment. Any order contravening the provision of this section shall be void. Upon the filing of such receipt showing payment of the tax, the clerk shall record the same upon the collateral inheritance tax lien book in his office. (Laws 1911, p. 56.)

**§ 565. Jurisdiction of Court.**

Sec. 21. The district court in the county in which some part of the property is situated, of the decedent who was not a resident, or such court in the county of which the deceased was a resident at the time of his death or where such estate is administered, shall have jurisdiction to hear and determine all questions regularly brought before it in relation to said tax that may arise affecting any devise, legacy, annuity, transfer, grant, gift or inheritance, subject to appeal as in other cases, and the treasurer of state shall in his name of office, with all the rights and privileges of a party in interest, represent the state in any such proceedings. (Laws 1911, p. 57.)

**§ 566. Bequest to Executor in Lieu of Compensation.**

Sec. 22. Whenever a decedent appoints one or more executors or trustees and in lieu of their allowance or commission, makes a bequest or devise of property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises or residuary legacies exceed the statutory fees as compensation for their services, such excess shall be liable to such tax. (Laws 1911, p. 57.)

**§ 567. Legacies Charged upon Real Estate.**

Sec. 23. Whenever any legacies subject to said tax are charged upon or payable out of any real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay it to the executor, administrator, trustee or treasurer of state, and the same shall remain a charge against and be a lien upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator, trustee or treasurer of state in his name of office as herein provided. (Laws 1911, p. 57.)

**§ 568. Interest on Delinquent Taxes.**

Sec. 24. All taxes imposed by this act shall be payable to the treasurer of state, and except when otherwise provided in this act, shall be paid within

eighteen (18) months from the death of the testator or intestate. All taxes not paid within the time prescribed in this act shall draw interest at the rate of eight per centum per annum thereafter until paid. (Laws 1911, p. 57.)

**§ 569. Information to be Furnished State Treasurer on Demand.**

Sec. 25. Before issuing his receipt for the tax, the treasurer of state may demand from administrators, executors, trustees or beneficiaries such information as may be necessary to verify the correctness of the amount of the tax and interest, and when such demand is made they shall send to said treasurer certified copies of wills, deeds, or other papers, or of such parts of their reports as he may demand, and upon the refusal or neglect of said parties to comply with the demand of the treasurer of state, it is the duty of the clerk of the court to comply with such demand, and the expenses of making such copies and transcripts shall be charged against the estate, as are other costs in probate, or the tax may be assessed without deducting debts for which the estate may be liable. (Laws 1911, p. 57.)

**§ 570. Lien Book to be Kept by Clerk of Court.**

Sec. 26. The clerk of the district court in and for each county shall provide and keep a suitable book, substantially bound and suitably ruled, to be known as the collateral inheritance tax and lien book, in which shall be kept a full and accurate record of all proceedings in cases where property is charged or sought to be charged with the payment of a collateral inheritance tax under the laws of this state, to be printed and ruled so as to show upon one page,

- (1) The name, place of residence, and date of death of the decedent.
  - (2) Whether the decedent died testate, or intestate, and if testate, the record and page where the will was probated and recorded.
  - (3) The name and postoffice address of the executor, administrator, trustee, or grantee, with the date of appointment or transfer.
  - (4) The names, postoffice addresses and relationship, if known, of all the heirs, devisees and grantees.
  - (5) The appraised valuation of the personal property.
  - (6) The amount of inheritance tax due upon said personal property.
  - (7) A record of payment with amount and date.
  - (8) Date of filing objections and names of objectors.
  - (9) Blank for index and reference to all proceedings and for memorandum entries of the court or judge in relation thereto.
- Upon the opposite page of such record shall be printed:
- (1) Real estate derived from ..... (naming decedent) which is subject to the lien prescribed by the statute for collateral inheritance tax.
  - (2) A full and accurate description of such real estate, by forty-acre or fractional tracts, or by lots, or other complete individual description.
  - (3) The appraised valuation as reported by the appraisers, with a reference to the record of their report, as to each piece of such real estate.
  - (4) The amount of the inheritance tax due upon each such piece.
  - (5) A record of payments, with dates and amounts. (Laws 1911, p. 57.)

**§ 571. Report of Executors—Entry of Tax Liens.**

Sec. 27. Upon the appointment and qualification of such executor, administrator and testamentary trustee, the clerk issuing the letters shall at the same time deliver to him a blank form upon which he shall be required to make detailed report of the following facts:

- (1) Name and last residence of decedent.
- (2) Date of death.
- (3) Whether or not he left a will.
- (4) Name and postoffice of executor, administrator or trustee.
- (5) Name and postoffice of surviving wife or husband if any.
- (6) If testate, name and postoffice of each beneficiary under the will.
- (7) Relationship of each beneficiary to the testator.
- (8) If intestate, name and postoffice of each heir at law.
- (9) Relationship of each heir at law to decedent.
- (10) Inventory of all the real estate of the decedent giving amount and description of each tract.
- (11) Whether the property passes in possession and enjoyment in fee for life or for a term of years.

Within thirty days after his qualification, each executor, administrator, and testamentary trustee shall make and return to the clerk, under oath, a full and detailed report as indicated in the preceding paragraph, any will to the contrary notwithstanding, and upon his failure to do so, the clerk shall forthwith report his delinquency to the district court if in session, or to a judge of said court if in vacation, for such order as may be necessary to enforce an observance of this section. If it appears from the inventory or report so filed that the real estate or any part of it is subject to an inheritance tax, it shall be the duty of the executor or administrator or of any person interested in the property if there be no administration, to cause the lien of the same to be entered upon the lien book in the office of the clerk of the court in each county where each particular tract of said real estate is situated, and when said real estate or any interest therein, is subject to such tax, no conveyance either before or after the entering of said lien, shall discharge the real estate so conveyed from said lien, no final settlement of the account of any executor, administrator or trustee shall be accepted or allowed unless a strict compliance with the provisions of this section has been had by such person. Upon the filing of such report, the clerk of the court shall immediately forward a true copy thereof to the treasurer of state. (Laws 1911, p. 58.)

**§ 572. Extension of Time for Appraisement.**

Sec. 28. Whenever, by reason of the complicated nature of an estate, or by reason of the confused condition of the decedent's affairs, it is impracticable for the executor, administrator, trustee or beneficiary of said estate to file with the clerk of the court a full, complete and itemized inventory of the personal assets belonging to the estate, within the time required by statute for filing inventories of the estates, the court may, upon the application of such representatives or parties in interest, extend the time for making the collateral inheritance appraisement for a period not to exceed three months beyond the time fixed by this act. (Laws 1911, p. 59.)

**§ 573. Report by Heirs to Clerk.**

Sec. 29. Whenever any property passing under the intestate laws may be subject to the tax imposed by this act, the person or persons entitled to such property shall make or cause to be made to the clerk of the courts of the county wherein such property is located, within ninety days next following the death of such intestate, a report in writing embodying therein substantially the information required by the second preceding section of this act. Failure to furnish such report or to probate the will in a testate estate, shall not relieve the estate from the lien created hereby or the persons entitled to the property of such decedent from payment of the tax, interest or other penalties imposed by this act. (Laws 1911, p. 59.)

**§ 574. Entries to be Made by Clerk in Lien Book.**

Sec. 30. The clerk shall enter upon the collateral inheritance tax and lien book, the title of all estates subject to the inheritance tax as shown by the inventories or lists of heirs filed in his office, or as reported to him by the county attorney, treasurer of state, or other person, and shall enter in said book as against each estate or title at the appropriate place, all such information relating to the situation and condition of the estate as he may be able to obtain from the papers filed in his office, or from any other source, as may be necessary to the collection and enforcement of the tax. He shall also immediately index in the book kept in his office for that purpose, all liens entered upon the collateral inheritance tax and lien book. Failure to make such entries as are herein required, shall not operate to relieve the estate from the lien or defeat the collection of the tax. (Laws 1911, p. 59.)

**§ 575. Clerk to Keep Probate Record.**

Sec. 31. In all cases entered upon the inheritance tax and lien book, the clerk shall make a complete record in the proper probate record, of all the proceedings, orders, reports, inventory, appraisements and all other matters and proceedings therein. (Laws 1911, p. 59.)

**§ 576. Clerk to Report Estates Subject to Tax—Fees.**

Sec. 32. It shall be the duty of each clerk of the district court to make examination from time to time of all reports filed with him by administrators, executors and trustees, pursuant to law; also to make examination of all foreign wills offered for probate or recorded within his county, as well as of the record of deeds and conveyances in the recorder's office of said county, and if from such examination or from information or knowledge coming to him from any other source, he finds or believes that any property within his county, or within the jurisdiction of the district court of said county has, since July 4, 1896, passed by will or by the intestate laws of this or any other state, or by deed or other method of conveyance, made in anticipation of or intended to take effect, in possession or in enjoyment after the death of the testator, donor or grantor, to any person other than to or for the use of the persons, societies, or organizations exempt from the tax hereby imposed, he shall make report thereof in writing to the treasurer of state, embodying in such report such information as he may be able to obtain as to the name and residence of decedent,



date of death, name and address of administrator, executor, or trustee, the description of any property liable to said tax and the county in which it is located and name and relationship of all beneficiaries or heirs. Any citizen of the state having knowledge of property liable to such tax, against which no proceeding for enforcing collection thereof is pending, may report the same to the clerk and it shall be the duty of such officer to investigate the case, and if he has reason to believe the information to be true, he shall forthwith enter the estate and report the same substantially as above indicated. For reporting such estates or property the clerk shall receive a compensation of one dollar for each one hundred dollars or fraction thereof of tax paid, but not to exceed the sum of five dollars in any one estate, the same to be in addition to the compensation now allowed him by law. Except when this information has been first received from another source, the treasurer of state, when he has issued his receipt for the tax in such estate, shall certify to the auditor of state the amount due the clerk for such service, and the auditor of state shall issue his warrant on the treasurer of state in favor of said clerk for the sum as herein provided. (Laws 1911, p. 59.)

#### § 577. Duties of County Attorney—Compensation.

Sec. 33. It shall be the duty of the county attorney of each county, when directed by the treasurer of state, to perform such legal services as shall be necessary in the enforcement of said tax, but such attorney shall have no authority to receipt for or receive any of such tax. He shall advise and assist the clerk and appraisers in the discharge of their duties in collateral inheritance tax matters, and see that the notices required by law are properly made and returned. In each estate where the county attorney has performed such legal services, he shall receive a compensation as follows, viz.: on the first one hundred dollars or fraction thereof of tax paid, ten per cent; on the excess of one hundred dollars to five hundred dollars five per cent; on the excess of five hundred dollars to one thousand dollars three per cent; on all sums in excess of one thousand dollars one per cent but not to exceed one hundred and fifty dollars from any one estate. Provided, however, that except in cases of litigation requiring the filing of a petition or answer in court, the fee in any case shall not exceed the sum of fifty dollars. When the treasurer of state has issued his receipt for the tax in an estate, in which the county attorney has been directed to render legal services, and has performed such services, the treasurer of state shall certify the amount due for such services to the auditor of state, who shall issue his warrant on the treasurer of state in favor of the said county attorney for the sum due. If the county attorney is attorney for the executor, administrator or other person interested in the state, the treasurer of state may employ another attorney to represent the state. (Laws 1911, p. 60.)

#### § 578. Settlement of Conflicting Claims for Fees.

Sec. 34. In the event of uncertainty or of conflicting claims as to fees due county attorneys or clerks under this act, the treasurer of state is empowered to determine the amount of fees, to whom payable, and when the same are due, and as far as possible, such determination shall be in accord with fixed rules made by the treasurer of state. (Laws 1911, p. 60.)

**§ 579. Enforcement of Payment of Tax.**

Sec. 35. On the first day of each regular term, the court shall require the clerk to present for its inspection the inheritance tax and lien book hereinbefore provided for, together with all reports of administrators, executors and trustees which have been filed pursuant to this act, since the last preceding term. The county attorney shall also attend and make report to the court concerning the progress of all cases pending for the collection of such taxes, together with any other facts, which in his judgment may aid the court in enforcing the general observance of the collateral inheritance tax law. If from information obtained from the records or reports, or from any other source, the court has reason to believe that there is property within its jurisdiction liable to the payment of an inheritance tax, against which proceedings for collection are not already pending, it shall enter an order of record, directing the county attorney to institute such proceedings forthwith. Should any estate, or the name of any grantee or grantees be placed upon the book at the suggestion of the county attorney, the treasurer of state, or other person, in which the papers already on file in the clerk's office do not disclose that an inheritance tax is due or payable, the county attorney shall forthwith give to all parties in interest such notice as the court or judge may prescribe, requiring them to appear on a day to be fixed by the said court or judge, and show cause why the property should not be appraised and subjected to said tax. At any such hearing any person may be required to appear and answer as to his knowledge of any such estate or property. If upon any such hearing the court is satisfied that any property of the decedent or any property devised, granted or donated by him, is subject to the tax, the same proceedings shall be had as in other cases, so far as applicable. (Laws 1911, p. 60.)

**§ 580. Costs Taxed to Estates.**

Sec. 36. In all cases where an estate or interest therein so passes as to be liable to taxation under this act, all costs of the proceedings had for the assessment of such tax shall be chargeable to such estate as other costs in probate proceedings and to discharge the lien, all costs, as well as the taxes must be paid. In all other cases the costs are to be paid as ordered by the court. When a decision adverse to the state has been rendered, with an order that the state pay the costs, it shall be the duty of the clerk of the court in which such action was pending to certify the amount of such costs to the treasurer of state, who shall, if said costs be correctly certified, and the case has been finally terminated, and the tax if any due has been paid, present the claim to the executive council to audit, and said claim being allowed by said council, the auditor of state is directed to issue a warrant on the treasurer of state in payment of such costs. (Laws 1911, p. 61.)

**§ 581. Delivery or Transfer of Securities or Deposits—Notice.**

Sec. 37. No safe deposit company, trust company, bank or other institution, person or persons holding securities or assets of the decedent shall deliver or transfer the same to the executor, administrator or legal representative of said decedent unless the tax for which such securities or assets are liable under this act shall be first paid, or the payment thereof is secured by bond as herein

provided. It shall be lawful for and the duty of the treasurer of state personally, or by any person by him duly authorized, to examine such securities or assets at the time of any proposed delivery or transfer. Failure to serve ten days' notice of such proposed transfer upon the treasurer of state or to allow such examination on the delivery of such securities or assets to such executor, administrator or legal representative shall render such safe deposit company, trust company, bank or other institution, person or persons liable for the payment of the tax upon such securities or assets as provided in this act. (Laws 1911, p. 61.)

**§ 582. Transfers of Corporate Stock—Liability of Corporation.**

Sec. 38. If a foreign executor, administrator or trustee shall assign or transfer any corporate stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to such tax, the tax shall be paid to the treasurer of state on or before the transfer thereof; otherwise the corporation permitting its stock to be so transferred shall be liable to pay such tax, interest, and costs, and it is the duty of the treasurer of state to enforce the payment thereof. (Laws 1911, p. 61.)

**§ 583. Corporations to Report Certain Stock Transfers to State Treasurer.**

Sec. 39. All Iowa corporations organized for pecuniary profit, shall on July 1st of each year, by its proper officers under oath make a full and correct report to the treasurer of state of all transfers of its stocks made during the preceding year by any person who appears on the books of such corporation as the owner of such stock, when such transfer is made to take effect at or after the death of the owner or transferer, and all transfers which are made by an administrator, executor, trustee, referee, or any person other than the owner or person in whose name the stocks appeared of record on the books of such corporation, prior to the transfer thereof. Such report shall show the name of the owner of such stocks and his place of residence, the name of the person at whose request the stock was transferred, his place of residence and the authority by virtue of which he acted in making such transfer, the name of the person to whom the transfer was made, and the residence of such person; together with such other information as the officers reporting may have relating to estates of persons deceased who may have been owners of stock in such corporation. If it appears that any such stock so transferred is subject to tax under the provisions of this act, and the tax has not been paid, the treasurer of state shall notify the corporation in writing of its liability for the payment thereof, and shall bring suit against such corporation as in other cases herein provided unless payment of the tax is made within sixty days from the date of such notice. (Laws 1911, p. 62.)

**§ 584. Foreign Estates—Deduction of Debts.**

Sec. 40. Whenever any property belonging to a foreign estate, which estate in whole or in part passes to persons not exempt herein from such tax, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. In the event that the executor, administrator or trustee

of such foreign estate files with the clerk of the court having ancillary jurisdiction, and with the treasurer of state, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate. (Laws 1911, p. 62.)

#### **§ 585. Property of Foreign Estates not Specifically Devised.**

Sec. 41. Whenever any property, real or personal, within this state belongs to a foreign estate and said foreign estate passes in part exempt from the tax imposed by this act and in part subject to said tax and there is no specific devise of the property within this state to direct heirs or if it is within the authority or discretion of the foreign executor, administrator or trustee administering the estate to dispose of the property not specifically devised to direct heirs or devisees in the payment of debts owing by the decedent at the time of his death, or in satisfaction of legacies, devises, or trusts given to direct or collateral legatees or devisees or in payment of the distributive shares of any direct and collateral heirs, then the property within the jurisdiction of this state, belonging to such foreign estate, shall be subject to the tax imposed by this act, and the tax due thereon shall be assessed as provided in the next preceding section of this act relating to the deduction of the proportionate share of indebtedness. Provided, however, that if the value of the property so situated exceeds the total amount of the estate passing to other persons than those exempt hereby from the tax imposed by this act such excess shall not be subject to said tax. (Laws 1911, p. 62.)

#### **§ 586. Approval of Compromise Settlement.**

Sec. 42. Whenever an estate charged or sought to be charged with the collateral inheritance tax is of such a nature, or is so disposed, that the liability of the estate is doubtful, or the value thereof cannot with reasonable certainty be ascertained under the provisions of law, the treasurer of state may, with the written approval of the attorney general, which approval shall set forth the reasons therefor, compromise with the beneficiaries or representatives of such estates, and compound the tax thereon; but said settlement must be approved by the district court or judge of the proper court, and after such approval the payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate. (Laws 1911, p. 63.)

#### **§ 587. Unknown Heirs.**

Sec. 43. Whenever the heirs or persons entitled to any estate, or any interest therein, are unknown or their place of residence cannot with reasonable certainty be ascertained, a tax of five per cent shall be paid to the treasurer of state upon all such estates or interests, subject to refund as provided herein in other cases; provided, however, that if it be afterward

determined that any estate or interest passes to aliens, there shall be paid within sixty days after such determination and before delivery of such estate or property, an amount equal to the difference between five per centum, the amount paid, and the amount which such person should pay under the provisions of this act. (Laws 1911, p. 63.)

**§ 588. Refund of Tax.**

Sec. 44. When within five years after the payment of the tax, a court of competent jurisdiction may determine that property upon which a collateral inheritance tax has been paid is not subject to or liable for the payment of such tax, or that the amount of tax paid was excessive, so much of such tax as has been overpaid to the treasurer of state shall be returned or refunded to the executor or administrator of such estate, or to those entitled thereto, when a certified copy of the record of such court showing the fact of nonliability of such property to the payment of such tax has been filed with the executive council of the state, the executive council shall if the case has been finally determined issue an order to the auditor of state directing him to issue a warrant upon the treasurer of state to refund such tax. Such order of court shall not be given until fifteen days' notice of the application therefor shall have been given to the treasurer of state of the time and place of the hearing of such application, which notice shall be served in the same manner as provided for original notices. (Laws 1911, p. 63.)

**§ 589. Contingent Estates, Devises or Legacies.**

Sec. 45. Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited. When an estate, devise, or legacy can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting. When a devise, bequest or transfer is one in part contingent, and in part vested so that the beneficiary will come into possession and enjoyment of a portion of his inheritance on or before the happening of the event upon which the possible defeating contingency is based, a tax shall be imposed and collected upon such bequest or transfer as upon a vested interest, at the highest rate possible under the terms of this act if no such contingency existed; provided, that in the event such contingency reduces the value of the estate or interest so taxed, and the amount of tax so paid is in excess of the tax for which such bequest or transfer is liable upon the removal of such contingency, such excess shall be refunded as is provided in section forty-four of this act in other cases. (Laws 1911, p. 63.)

**§ 590. Definitions of Terms.**

Sec. 46. In the construction of this act, the words "collateral heirs" shall be held to mean all persons who are not specifically exempt from the

tax imposed by the provisions hereof. The word "person" shall include a plural as well as singular, and artificial as well as natural persons. This act shall not be construed to confer upon a county attorney authority to represent the state in any case, and he shall represent the treasurer of state only when especially authorized by him to do so. This act shall apply to all estates subject to taxation under the law repealed by this act if the tax for which such estates are liable shall not have been paid prior to the taking effect of this act. (Laws 1911, p. 64.)

**§ 591. Records to be Kept by State Treasurer.**

Sec. 47. The treasurer of state shall record in a book kept in his office for that purpose, all estates reported to him as liable for a tax under the provisions of this act, showing,—

- (1) The name of the decedent.
- (2) The place of his residence or county from which such estate was reported.
- (3) The date of his death.
- (4) The name of the administrator, executor or trustee.
- (5) The appraised value of the property, or the value of any taxable pecuniary legacy.
- (6) The amount of indebtedness that was deducted before estimating the tax.
- (7) The amount of tax collected.
- (8) The amount of fees paid for reporting and collecting such tax.
- (9) The amount of tax, if any, refunded.

He shall also keep a separate record of any deferred estate upon which the tax due is not paid within eighteen (18) months from the death of the decedent, showing substantially the same facts as is required in other cases, and also showing,—

- a. The date and amount of all bonds given to secure the payment of the tax with a list of the sureties thereon.
- b. The name of the person beneficially entitled to such estate or interest, with place of residence.
- c. A description of the property or a statement of conditions upon which such deferred estate is based or limited. (Laws 1911, p. 64.)

**§ 592. Repeal of Conflicting Statutes.**

Sec. 48. Chapter four, of title seven, of the supplement to the code, 1907, and chapter ninety-two of the acts of the thirty-third general assembly, and all other acts or parts of acts in conflict herewith are hereby repealed. Approved May 2, A. D. 1911.

## CHAPTER XXXI.

## KANSAS STATUTE.

*(General Statutes of 1909, pp. 1997-2004.)*

- § 593. Transfers Subject to Tax—Rates—Persons Liable—Exemptions.
- § 594. Property Out of State or Nonresident Within State.
- § 595. Payment of Tax—Interest—Lien of Tax.
- § 596. Deposit for Payment of Tax in Case of Contingent Gift.
- § 597. Assessment of Tax—Value of Property.
- § 598. Payment of Tax on Future Interests.
- § 599. Bequests to Executors in Lieu of Compensation.
- § 600. Collection of Tax by Executor.
- § 601. Legacy Charged upon Real Estate.
- § 602. Testamentary Provision for Payment.
- § 603. Sale of Property to Pay Tax.
- § 604. Inventory and Appraisement—Failure to File.
- § 605. Recording Inventory and Appraisement—Copies of Papers.
- § 606. Tax on Stock Transferred by Foreign Executor.
- § 607. Tax on Assets Delivered to Nonresident.
- § 608. Refunding Excess Payments.
- § 609. Determination of Value of Property.
- § 610. Determination of Tax by Commission.
- § 611. Jurisdiction of Probate Court.
- § 612. Administration at Instance of Tax Commission.
- § 613. Account of Executor not Settled Until Tax Paid.
- § 614. Proceedings for Recovery of Tax.
- § 615. Retrospective Operation of Statute.
- § 616. Report of County Treasurer.
- § 617. Commissions of County Treasurer.
- § 618. Taxes to be Paid into State Treasury.
- § 619. Definitions of Terms.

## § 593. Transfers Subject to Tax—Rates—Persons Liable—Exemptions.

Sec. 52. All property, corporeal or incorporeal, and any interest therein, within the jurisdiction of the state, whether belonging to the inhabitants of the state or not, which shall pass by will or by the laws regulating intestate succession, or by deed, grant, or gift made in contemplation of death, or made or intended to take effect in possession or enjoyment after the death of the grantor, to any person, absolutely or in trust—except in case of a bona fide purchase for full consideration in money or money's worth; and except property to or for the use of literary, educational, scientific, religious, benevolent and charitable societies or institutions: Provided, such use entitles the property so passing to be exempt from taxation; and except property to or for the use of the state, a county or a municipality for public purposes; and except property to or for the use of a class herein designated as class A, being the husband, wife, lineal ancestor, lineal descendant, adopted child, the lineal

descendant of any adopted child, the wife or widow of a son or the husband of a daughter of a decedent; and except property to or for the use of a class herein designated as class B, being the brother, sister, nephew or niece of a decedent, not to exceed twenty-five thousand dollars, shall be subject to a tax of five per cent of its value; and all such property which shall so pass in excess of twenty-five thousand dollars and not to exceed fifty thousand dollars shall be subject to a tax of seven and one-half per cent of its value; and all such property which shall so pass in excess of fifty thousand dollars and not to exceed one hundred thousand dollars shall be subject to a tax of ten per cent of its value; and all such property which shall so pass in excess of one hundred thousand dollars and not to exceed five hundred thousand dollars shall be subject to a tax of twelve and one-half per cent of its value; and all such property which shall so pass in excess of five hundred thousand dollars shall be subject to a tax of fifteen per cent of its value; and all such property which shall so pass to or for the use of a member of class A not to exceed twenty-five thousand dollars shall be subject to a tax of one per cent of its value; and all such property which shall so pass to or for the use of a member of class A in excess of twenty-five thousand dollars and not to exceed fifty thousand dollars shall be subject to a tax of two per cent of its value; and all such property which shall so pass to or for the use of a member of class A in excess of fifty thousand dollars and not to exceed one hundred thousand dollars shall be subject to a tax of three per cent of its value; and all such property which shall so pass to or for the use of a member of class A in excess of one hundred thousand dollars and not to exceed five hundred thousand dollars shall be subject to a tax of four per cent of its value; and all such property which shall so pass to or for a member of class A in excess of five hundred thousand dollars shall be subject to a tax of five per cent of its value; and all such property which shall so pass to or for the use of a member of class B not to exceed twenty-five thousand dollars shall be subject to a tax of three per cent of its value; and all such property which shall so pass to or for the use of a member of class B in excess of twenty-five thousand dollars and not to exceed fifty thousand dollars shall be subject to a tax of five per cent of its value; and all such property which shall so pass to or for the use of class B in excess of fifty thousand dollars and not to exceed one hundred thousand dollars shall be subject to a tax of seven and one-half per cent of its value; and all such property which shall so pass to or for the use of a member of class B in excess of one hundred thousand dollars and not to exceed five hundred thousand dollars shall be subject to a tax of ten per cent of its value; and all such property which shall so pass to or for a member of class B in excess of five hundred thousand dollars shall be subject to a tax of twelve and one-half per cent of its value; and all taxes hereinafter provided for shall be for the use of the state; and administrators, executors and trustees, and any grantees under any such conveyance made during the grantor's life, shall be liable for such taxes, with interest at the legal rate, until the same shall have been paid: Provided, that no bequest, devise or distributive share of an estate which shall so pass to or for the use of a husband, wife, father, mother, child or adopted child of the deceased, shall be subject to the provisions of this act, unless its value exceeds five thousand dollars: And pro-



vided further, that no bequest, devise or distributive share of an estate which shall so pass to or for the use of a brother, sister, nephew or niece of the deceased shall be subject to the provisions of this act unless its value exceeds one thousand dollars. Property shall be deemed to have been transferred by grant or gift in contemplation of death, under this act, when such grant or gift shall have been executed within one year prior to the death of the grantor or donor. (Gen. Stats. (1909), p. 1997.)

**§ 594. Property Out of State or Nonresident Within State.**

Sec. 53. Property of a resident of a state, which is not therein at the time of his death, shall not be taxable under the provisions of this act if legally subject in another state or country to a tax of like character and amount to that hereby imposed: Provided, such tax be actually paid, guaranteed or secured in such other state or country. If, however, such property be legally subject in another state or country to a tax of like character but of less amount than that hereby imposed, and such tax be actually paid, guaranteed or secured as aforesaid, such property shall be taxable under this act to the extent of the excess for which such property would otherwise be liable hereunder over the tax thus actually paid, guaranteed or secured. Property of the estate of a nonresident decedent, which is situated in the state at the time of his death, if subject to a tax of like character with that imposed by this act by the law of the state or country where decedent had his residence, shall be subject only to such portion of the tax hereby imposed as may be in excess of such tax imposed by the laws of such other state or country: Provided, that a like exemption is made by the laws of such other state or country in favor of estates of citizens of this state, but in such cases no exemption shall be allowed until the tax provided for by the law of such other state or country shall be actually paid, guaranteed or secured in accordance with law. (Gen. Stats. (1909), p. 1999.)

**§ 595. Payment of Tax—Interest—Lien of Tax.**

Sec. 54. Except as hereinafter provided, taxes imposed by the provisions of this act shall be payable to the county treasurer of the county in which is situated the probate court having jurisdiction as in this act provided, by the executors, administrators or trustees, at the expiration of one year after the date of their giving bond; but if legacies or distributive shares are paid within the one year, the taxes thereon shall be payable at the same time. In cases where property is transferred by deed, grant or gift made in contemplation of death, the tax thereon shall be due and payable at the time of such transfer. In all cases where there shall be a grant, devise, descent or bequest, to take effect in possession or come into actual enjoyment after the expiration of one or more life estates or after a term of years, the taxes thereon shall be payable by the executors, administrators or trustees in office when such right of possession accrues, or, if there is no such executor, administrator or trustee, by the person so entitled thereto, at the date when the right of possession accrues to the person or persons so entitled. If the taxes contemplated by this act are not paid when due, interest at the legal rate shall be charged and collected from the time the same becomes payable. Property of which a decedent died seized

or possessed, subject to taxes as aforesaid, in whatever form or investment it may happen to be, and all property acquired in substitution therefor, shall be charged with a lien for all taxes and interest thereon which are or may become due on such property; but said lien shall not affect any personal property after the same has been sold or disposed of for value by the executors, administrators or trustees. The lien charged by this act upon any real estate or separate parcel thereof may be discharged by the payment of all taxes due and to become due which are secured by such lien on real estate, or such lien for taxes may be satisfied, in relation to any real estate or separate parcel thereof, on condition that the payment of the tax to the state is first secured by bond or deposit or that other real estate is substituted in the place of that which is sought to be released: provided, that the probate court having jurisdiction shall first approve the bond or deposit tendered, or in advance thereof shall approve of the substitution of other real estate as security for the taxes, in lieu of that which is to be released. (Gen. Stats. (1909), p. 1999.)

**§ 596. Deposit for Payment of Tax in Case of Contingent Gift.**

Sec. 55. In every case where there shall be a bequest or grant of personal estate made or intended to take effect in possession or enjoyment after the death of the grantor, to take effect in possession or come into actual enjoyment after the expiration of one or more life estates or a term of years, whether conditioned upon the happening of a contingency, or dependent upon the exercise of a discretion, or subject to a power of appointment or otherwise, the executor or administrator or grantor may deposit with the county treasurer a sum of money sufficient in the opinion of the said county treasurer to pay all taxes which may become due upon such bequest or grant, and the person or persons having the right to the use or income of such personal estate shall be entitled to receive from the said county treasurer interest at the rate of four per cent per annum upon such deposit, and when said tax shall become due the said county treasurer shall repay to the persons entitled thereto the difference between the tax certified and the amount deposited; or any executor, administrator, trustee or grantee, or any person interested in such bequest or grant may give bond to the probate court having jurisdiction of the estate of the decedent, in such amount and with such sureties as said court may approve, with the condition that the obligor shall notify the tax commission when said tax becomes due and shall then pay the same to the county treasurer. (Gen. Stats. (1909), p. 2000.)

**§ 597. Assessment of Tax—Value of Property.**

Sec. 56. Except as hereinafter provided, said tax shall be assessed upon the actual value of the property at the time of the death of the decedent. In every case where property is transferred by deed, grant or gift made in contemplation of death, the tax thereon shall be a lien on the interest of the beneficiary therein from the date of transfer and shall be assessed when the beneficiary becomes entitled to the possession and enjoyment thereof. In every case where there shall be a devise, descent, bequest or grant to take effect in possession or enjoyment after the expiration of one or more life estates or a term of years, the tax shall be assessed on the actual value of the property or

the interest of the beneficiary therein at the time when he becomes entitled to the same in possession or enjoyment. The value of an annuity or a life interest in any such property, or any interest therein less than an absolute interest, shall be determined by the "American Experience Tables" at four per cent compound interest. (Gen. Stats. (1909), p. 2000.)

**§ 598. Payment of Tax on Future Interests.**

Sec. 57. Any person or persons entitled to a future interest or to future interests in any property may pay the tax on account of the same at any time before such tax would be due in accordance with the provisions hereinbefore contained, and in such cases the tax shall be assessed upon the actual value of the interest at the time of the payment of the tax, and such value shall be determined by the tax commission as hereinafter provided. In every case in which it is impossible to compute the present value of the future interest the tax commission may, with the approval of the attorney general, effect such settlement of the tax as it shall deem to be for the best interests of the state, and payment of the sum so agreed upon shall be a full satisfaction of such tax. (Gen. Stats. (1909), p. 2000.)

**§ 599. Requests to Executors in Lieu of Compensation.**

Sec. 58. If a testator gives, bequeaths or devises to his executors or trustees any property otherwise liable to said tax, in lieu of their compensation, the value thereof in excess of reasonable compensation, as determined by the probate court upon the application of any interested party or of the tax commission, shall nevertheless be subject to the provisions of this act. (Gen. Stats. (1909), p. 2001.)

**§ 600. Collection of Tax by Executor.**

Sec. 59. An executor, administrator or trustee holding property subject to said tax shall deduct the tax therefrom or collect it from the legatee or person entitled to said property; and he shall not deliver property or a specific legacy subject to said tax until he has collected the tax thereon. An executor or administrator shall collect taxes due upon land which is subject to tax under the provisions hereof from the heirs or devisees entitled thereto, and he may be authorized to sell said land according to the provisions of section 11 if they refuse or neglect to pay said tax. (Gen. Stats. (1909), p. 2001.)

**§ 601. Legacy Charged upon Real Estate.**

Sec. 60. If a legacy subject to said tax is charged upon or payable out of real estate, the heir or devisee, before paying it, shall deduct said tax therefrom and pay it to the executor, administrator or trustee, and the tax shall remain a lien upon said real estate until it is paid. Payment thereof may be enforced by the executor, administrator or trustee in the same manner as the payment of the legacy itself could be enforced. (Gen. Stats. (1909), p. 2001.)

**§ 602. Testamentary Provision for Payment.**

Sec. 61. When provision is made by any will or other instrument for payment of the legacy or succession tax upon any gift thereby made out of any

property other than that so given, no tax shall be chargeable upon any money to be applied in payment of such tax. (Gen. Stats. (1909), p. 2001.)

**§ 603. Sale of Property to Pay Tax.**

Sec. 62. The probate court of the proper county may authorize executors, administrators and trustees to sell the real estate of a decedent for the payment of such tax in the same manner as it may authorize them to sell real estate for the payment of debts. (Gen. Stats. (1909), p. 2001.)

**§ 604. Inventory and Appraisal—Failure to File.**

Sec. 63. An inventory and appraisal under oath of every estate shall be filed in the probate court by the executor, administrator or trustee within three months after his appointment. If he neglects or refuses to file such inventory and appraisal he shall be liable to a penalty of not more than five thousand dollars, which shall be recovered in the proper district court by the attorney general or county attorney of the proper county at the instance of the tax commission, in the name of the state, for the use of the state; and the probate judge shall notify the tax commission within thirty days after the expiration of said three months of the failure of any executor, administrator or trustee to file an inventory and appraisal in his office. (Gen. Stats. (1909), p. 2001.)

**§ 605. Recording Inventory and Appraisal—Copies of Papers.**

Sec. 64. The probate judge shall record the inventory and appraisal of every estate which is filed in his office, and he shall, within thirty days after the same has been filed, send by mail to the tax commission such inventory and appraisal or a copy thereof. The probate judge shall also, within the same period, send by mail to the tax commission a copy of the will of the decedent, if such has been allowed by the probate court. The probate judge shall also furnish such copies of papers in his office as the tax commission shall require, and shall furnish information as to the records and files in his office in such form as the tax commission may require. The tax commission shall excuse the probate court from filing inventories or copies of inventories and of wills of estates no part of which appears to be subject to a tax under the provisions of this chapter. (Gen. Stats. (1909), p. 2001.)

**§ 606. Tax on Stock Transferred by Foreign Executor.**

Sec. 65. If a foreign executor, administrator or trustee assigns or transfers any stock in any national bank located in this state or in any corporation organized under the laws of this state owned by a deceased nonresident at the date of his death and liable to a tax under the provisions of this act, the tax shall be paid to the county treasurer of the proper county at the time of such assignment or transfer; and if it is not paid when due, such executor, administrator or trustee shall be personally liable therefor until it is paid. A bank located in this state or a corporation organized under the laws of this state which shall record a transfer of any share of its stock made by a foreign executor, administrator or trustee, or issue a new certificate for a share of its stock at the instance of a foreign executor, administrator or trustee, before

all taxes imposed thereon by the provisions of this act have been paid, shall be liable for such tax in an action of contract brought by the county attorney of the proper county or the attorney general in the name of the state and at the instance of either the probate court or the tax commission. (Gen. Stats. (1909), p. 2001.)

**§ 607. Tax on Assets Delivered to Nonresident.**

Sec. 66. Securities or assets belonging to the estate of a deceased nonresident shall not be delivered or transferred to a foreign executor, administrator or legal representative of said decedent without serving notice upon the tax commission of the time and place of such intended delivery or transfer seven days at least before the time of such delivery or transfer. The tax commission, by any member or by representative, may examine such securities or assets prior to the time of such delivery or transfer. Failure to serve such notice or to allow such examination shall render the person or corporation making the delivery or transfer liable to the payment of the tax due upon said securities or assets, in an action brought by the county attorney of the proper county or the attorney general in the name of the state. (Gen. Stats. (1909), p. 2002.)

**§ 608. Refunding Excess Payments.**

Sec. 67. If a person who has paid such tax afterward refunds a portion of the property on which it was paid, or if it is judicially determined that the whole or any part of such tax ought not to have been paid, such tax, or the due proportion thereof, shall be repaid to him by the executor, administrator or trustee. (Gen. Stats. (1909), p. 2002.)

**§ 609. Determination of Value of Property.**

Sec. 68. The value of the property upon which the tax is computed shall be determined by the tax commission and notified by it to the person or persons by whom the tax is payable and to the probate court and county treasurer of the proper county, and such determination shall be final unless the value so determined shall be reduced by proceedings as herein provided. At any time within three months after such determination the probate court shall, upon the application of any party interested in the succession, or on application of the executor, administrator or trustee, appoint three disinterested appraisers, who, first being sworn, shall appraise such property at its actual value in money as of the day of the death of the decedent, and shall make return thereof to said court. Such return, when accepted by said court, shall be final; provided, that any party aggrieved by such appraisal shall have an appeal upon matters of law. One-half of the fees of said appraisers, as determined by the judge of said court, shall be paid by the county treasurer, and one-half of said fees shall be paid by the other party or parties to said proceedings. (Gen. Stats. (1909), p. 2002.)

**§ 610. Determination of Tax by Commission.**

Sec. 69. The tax commission shall determine the amount of tax due and payable upon any estate, or upon any part thereof, and shall certify the

amount so due and payable to the probate court and to the county treasurer and to the person or persons by whom the tax is payable; but in the determination of the amount of any tax said tax commission shall not be required to consider any payments on account of debts or expenses of administration which have not been allowed by the probate court having jurisdiction of said estate. Payment of the amount so certified shall be a discharge of the tax. An executor, administrator, trustee or grantee who is aggrieved by any determination of the tax commission may, within one year after the payment of any tax to the county treasurer, apply by a petition to the probate court having jurisdiction of the estate of the decedent for the abatement of said tax, or any part thereof, and if the court adjudges that said tax, or any part thereof, was wrongly exacted it shall order an abatement of such portion of said tax as was assessed without authority of law. Upon a final decision ordering an abatement of any portion of said tax the county treasurer shall refund the amount adjudged to have been illegally exacted, with interest at the legal rate, without any further act or resolve making appropriation therefor. (Gen. Stats. (1909), p. 2003.)

#### § 611. Jurisdiction of Probate Court.

Sec. 70. The probate court having jurisdiction of the settlement of the estate of the decedent, subject to appeal as in other cases, shall hear and determine all questions relative to said tax, and the county attorney of the proper county, at the request of the tax commission or of the county treasurer, shall represent the state in any such proceedings. If the court shall find that any tax remains due, it shall order the executor, administrator or trustee to pay the same, with interest and costs; and if it appears that there are no goods or assets of the estate in his hands, the court may assess the amount of the tax against the executor, administrator or trustee, as if for his own debt, and may enforce compliance with such order by proper procedure as now authorized by probate practice; but the administrators, executors, trustees and grantees hereinbefore mentioned shall be personally liable only for such taxes as shall be payable while they continue in the said offices or have title as such grantees, respectively. In the case where the tax is due and payable by and collectible from the beneficiary, all actions shall be prosecuted by the attorney general or the county attorney of the proper county in the name of the state, and such actions may be brought in the same courts as other actions for money. (Gen. Stats. (1909), p. 2003.)

#### § 612. Administration at Instance of Tax Commission.

Sec. 71. If upon the decease of a person leaving an estate liable to a tax under the provisions of this act a will disposing of such estate is not offered for probate, or an application for administration made within four months after such decease, the probate court, upon application by the county attorney of the proper county or the attorney general at the instance of the tax commission, shall appoint an administrator if it then appears that there is no will in existence. (Gen. Stats. (1909), p. 2003.)

**§ 613. Account of Executor not Settled Until Tax Paid.**

Sec. 72. No final account of an executor, administrator or trustee shall be allowed by the probate court unless such account shows, and the judge of said court finds, that all taxes imposed by the provisions of this act upon any property or interest therein belonging to the estate to be settled by said account and already payable have been paid, and that all taxes which may become due on said estate have been paid or settled as hereinbefore provided, or that the payment thereof to the state is secured by bond or deposit or by lien on real estate. The certificate of the tax commission and the receipt of the county treasurer for the amount of the tax therein certified shall be conclusive as to the payment of the tax, to the extent of said certification. (Gen. Stats. (1909), p. 2003.)

**§ 614. Proceedings for Recovery of Tax.**

Sec. 73. The county attorney of the proper county or the attorney general, at the instance of the county treasurer or the tax commission, shall commence proceedings for the recovery of any of said taxes within six months after the same become payable, and also whenever the judge of a probate court certifies to him that the final account of an executor, administrator or trustee has been filed in such court and that the settlement of the estate is delayed because of the nonpayment of said tax. The probate court shall so certify upon the application of any heir, legatee or other person interested therein, and may extend the time of payment of said tax whenever the circumstances of the case require. (Gen. Stats. (1909), p. 2004.)

**§ 615. Retrospective Operation of Statute.**

Sec. 74. This act shall not apply to estates of persons deceased prior to the date when it takes effect, or to property passing by deed, grant, sale or gift made prior to said date. (Gen. Stats. (1909), p. 2004.)

**§ 616. Report of County Treasurer.**

Sec. 75. Each county treasurer shall make a report, under oath, to the state treasurer on the first day of January, April, July and October, respectively, of each year of all taxes received by him under this act, which report shall state for what estate and by whom and when paid. The form of such report may be prescribed by the tax commission, and all moneys received in pursuance of this act by such treasurer shall be turned over to the state treasurer by the county treasurer, in such manner as the laws at the time in force in relation to drawing of state moneys from county treasurers shall direct. (Gen. Stats. (1909), p. 2004.)

**§ 617. Commissions of County Treasurer.**

Sec. 76. The county treasurer shall retain, for the use of the county, as compensation to the county for services of county officers, out of all taxes paid to and accounted for by him each year under this act, five per cent of the tax paid on the first fifty thousand dollars, three per cent on the next fifty thousand dollars, and two per cent on all additional sums. (Gen. Stats. (1909), p. 2004.)

**§ 618. Taxes to be Paid into State Treasury.**

Sec. 77. All taxes levied and collected under this act, less any expenses of collection, shall be paid into the treasury of the state for the benefit of the general revenue fund, and shall be applicable to such purposes as the legislature by law may direct. (Gen. Stats. (1909), p. 2004.)

**§ 619. Definitions of Terms.**

Sec. 78. The words "estate" and "property," as used in this act, shall be taken to mean the real, personal and mixed property or interest therein of the testator, intestate, grantor, bargainor, vendor or donor which shall pass or be transferred to legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors, and shall include all personal property within or without the state. The word "transfer," as used in this act, shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment in the manner herein prescribed. The word "decedent," as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor. (Gen. Stats. (1909), p. 2004.)



## CHAPTER XXXII.

### KENTUCKY STATUTE.

*(Acts of 1906; Russell's Statutes (1909), pp. 1521-1525.)*

- § 620. Transfers Subject to Tax—Rate of Taxation—Persons Liable.
- § 621. Estates for Years or Life—Remainders and Contingent Interests.
- § 622. Bequests to Executors in Lieu of Compensation.
- § 623. Time for Payment—Interest and Discount.
- § 624. Penalty for Nonpayment.
- § 625. Collection of Tax.
- § 626. Sale of Property to Pay Tax.
- § 627. Payment by Executor to Sheriff or Collector—Receipts and Vouchers.
- § 628. Refund to Legatee of Overpayment.
- § 629. Transfer of Stock or Loans—Payment of Tax.
- § 630. Appraisers and Appraisement.
- § 631. Appraiser Taking Other Than Regular Fees—Penalty.
- § 632. Jurisdiction of County Court.
- § 633. Records to be Kept by County Clerk.
- § 634. Duties of Sheriff or Collector in Enforcing and Accounting for Taxes.
- § 634a. Refund Where Legacy Less Than Five Hundred Dollars.

§ 620. Transfers Subject to Tax—Rate of Taxation—Persons Liable.

Sec. 6117. All property which shall pass, by will or by the intestate laws of this state, from any person who may die seised or possessed of the same while a resident of this state, or if such decedent was not a resident of this state at the time of death, which property, or any part thereof, shall be within this state, or any interest therein, or income therefrom, which shall be transferred by deed, grant, sale or gift, made in contemplation of the death of the grantor or bargainor, or intended to take effect in possession or enjoyment after such death, to any person or persons, or to any body politic or corporate, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property, or to the income thereof, other than to or for the use of his or her father, mother, husband, wife, lawful issue, the wife or widow of a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the commonwealth of Kentucky, and any lineal descendant of such decedent born in lawful wedlock, shall be, and is, subject to a tax of five dollars on every hundred dollars of the fair cash value of such property, and at a proportionate rate for any less amount, to be paid to the sheriff or collector of the proper county, as hereinafter defined for the general use of the commonwealth; and all administrators, executors and trustees shall be liable for any and all taxes until the same shall have been paid as hereinafter directed: Provided, that the first five hundred dollars of every estate shall not be subject to such duty or tax. (Russ. Stats. (1909), p. 1521.)

**§ 621. Estates for Years or Life—Remainders and Contingent Interests.**

Sec. 6118. When any grant, gift, devise, legacy or succession upon which a tax is imposed by section 1 [6117] of this article shall be an estate, income or interest for a term of years or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after the death of the decedent, and the fair cash value thereof, estimated at the price it would bring at a fair voluntary sale, determined in the manner provided in section 11 of this article and the tax prescribed shall be immediately due and payable to the sheriff or collector of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid: Provided, that the person or persons, or body politic or corporate, beneficially interested in the property chargeable with said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case such person or persons, or body politic or corporate, shall execute a bond to the commonwealth of Kentucky, in a sum of twice the amount of the tax arising upon personal estate, with such sureties as the county court may approve, conditioned for the payment of said tax and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the county clerk of the proper county: Provided, further, that such person shall make a full and verified return of such property to said court, and file the same in the office of the county clerk within one year of the death of the decedent, and within that period enter into such surety and renew the same every five years. (Russ. Stats. (1909), p. 1522.)

**§ 622. Requests to Executors in Lieu of Compensation.**

Sec. 6119. Whenever a decedent appoints or nominates one or more executors or trustees, and makes a bequest or devise of property to them in lieu of commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees and said bequest, devises, or residuary legacies exceed what would be a lawful compensation for their services, such excess shall be liable to said tax, and the county court in which the personal representatives of the decedent has qualified shall fix the compensation. (Russ. Stats. (1909), p. 1522.)

**§ 623. Time for Payment—Interest and Discount.**

Sec. 6120. All taxes imposed by this chapter, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and if the same are paid within eighteen months, no interest shall be charged and collected thereon, but if not so paid, interest at the rate of ten per centum per annum shall be charged and collected from the time said tax accrued: Provided, that if said tax is paid within nine months from the accruing thereof a discount of five per centum shall be allowed and deducted from said tax. And in all cases where the executors, administrators, or

trustees do not pay such tax within eighteen months from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section 2 [6118] of this chapter for the payment of said tax, together with interest. (Russ. Stats. (1909), p. 1522.)

**§ 624. Penalty for Nonpayment.**

Sec. 6121. The penalty of ten per centum per annum imposed by section 4 [6120] hereof, for the nonpayment of said tax, shall not be charged in case where, by reason of claims made upon the estate, necessary litigation, or other unavoidable cause of delay, the estate of any decedent, or a part thereof, cannot be settled at the end of eighteen months from the death of the decedent; and in such case only six per centum per annum shall be charged upon the said tax from the expiration of said eighteen months until the cause of such delay is removed. (Russ. Stats. (1909), p. 1522.)

**§ 625. Collection of Tax.**

Sec. 6122. Any administrator, executor or trustee having in charge or trust any legacy or property for distribution subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money, he shall collect the tax thereon upon the fair cash value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount; but if it be not in money, he shall make application to the county court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further orders relative thereto as the case may require. (Russ. Stats. (1909), p. 1523.)

**§ 626. Sale of Property to Pay Tax.**

Sec. 6123. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of debts of the estate, and the amount of said tax shall be paid as hereinafter directed. (Russ. Stats. (1909), p. 1523.)

**§ 627. Payment by Executor to Sheriff or Collector—Receipts and Vouchers.**

Sec. 6124. Every sum of money retained by an executor, administrator or trustee or paid into his hands, for any tax on property, shall be paid by him, within thirty days thereafter, to the sheriff or collector of the county in which the said tax is due and payable and the said sheriff or collector shall give and every executor, administrator or trustee shall take, duplicate receipts for such payment, one of which receipts said executor, administrator or trustee shall immediately send to the auditor of public accounts, whose

duty it shall be to charge the said sheriff or collector so receiving the tax with the amount thereof, and said auditor shall seal said receipt with the seal of his office and countersign the same, and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; and an executor, administrator or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed unless he shall produce a receipt so sealed and countersigned by the auditor, or a copy thereof, certified by him. (Russ. Stats. (1909), p. 1523.)

**§ 628. Refund to Legatee of Overpayment.**

Sec. 6125. Whenever any debts shall be proven against the estate of a decedent after the payment of legacies or distribution of property, from which the said tax has been deducted or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the tax so deducted or paid shall be repaid to him by the executor, administrator or trustee, if the said tax has not been paid to the sheriff or collector or to the auditor, or by the auditor if it has been so paid. (Russ. Stats. (1909), p. 1523.)

**§ 629. Transfer of Stock or Loans—Payment of Tax.**

Sec. 6126. Whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this state standing in the name of a decedent, or held in trust for a decedent, which shall be liable to the said tax, such tax shall be paid to the sheriff or collector of the proper county on the transfer thereof; otherwise the corporation permitting such transfer shall become liable to pay such tax. (Russ. Stats. (1909), p. 1523.)

**§ 630. Appraisers and Appraisement.**

Sec. 6127. When the value of any inheritance, devise, bequest or other interest subject to the payment of said tax is uncertain, the county court in which the said tax settlement proceedings are pending, on the application of any interested party, or upon his own motion, shall appoint some competent person as appraiser, as often as and whenever occasion may require, whose duty it shall be forthwith to give such notice by mail to all persons known to have or claim an interest in such property, and to such persons as the court may by order direct, of the time and place at which he will appraise such property, and at such time and place to appraise the same and make a report thereof, in writing, to said court, together with such other facts in relation thereto as said court may by order require to be filed with the clerk of said court; and from this report the said court shall, by order, forthwith assess and fix the fair cash value, as hereinbefore provided, of all inheritances, devises, bequests, or other interests and the tax to which the same is liable, and shall immediately cause notice thereof to be given, by mail, to all parties known to be interested therein; and the value of every future or contingent or limited estate, income, or interest shall, for the purpose of this chapter, be determined by the rule, method and standards of mortality prescribed by the mortality tables authorized by Kentucky

statutes for ascertaining the value of life estates, annuities and remainder interests save that the rate of interest to be assessed in computing the present value of all future interest and contingencies shall be five per centum per annum; and the insurance commissioner shall, on the application of said court, determine the value of such future or contingent or limited estate, income or interest, upon the facts contained in such report, and certify the same to the court, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct. The said appraiser shall be paid by the personal representative of the decedent, out of any funds that may be or may come into his hands on account of said tax, on the certificate of the court, at the rate of three dollars per day for every day actually and necessarily employed in said appraisement, together with his actual and necessary traveling expenses. (Russ. Stats. (1909), p. 1524.)

**§ 631. Appraiser Taking Other Than Regular Fees—Penalty.**

Sec. 6128. Any appraiser appointed by virtue of this chapter who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred dollars nor more than five hundred dollars, or imprisoned in the county jail sixty days, or both so fined and imprisoned, and in addition thereto the court shall dismiss him from such service. (Russ. Stats. (1909), p. 1524.)

**§ 632. Jurisdiction of County Court.**

Sec. 6129. The county court in the county in which is situated the real property of a decedent who was not a resident of the state, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this chapter and the court first acquiring jurisdiction hereunder shall retain the same, to the exclusion of every other. (Russ. Stats. (1909), p. 1524.)

**§ 633. Records to be Kept by County Clerk.**

Sec. 6130. The county clerk of each county shall keep a book to be furnished by the auditor, in which he shall enter the values of inheritances, devises, bequests and other interests subject to the payment of such tax, and the tax assessed thereon, and the amounts of any receipts for payments thereon filed with him, which book shall be kept by him as a public record. (Russ. Stats. (1909), p. 1524.)

**§ 634. Duties of Sheriff or Collector in Enforcing and Accounting for Taxes.**

Sec. 6131. The sheriff or collector of each county shall collect and pay to the auditor all taxes that may be due and payable under this chapter, who shall give him the receipt therefor; of which collections and payment he shall make a report, under oath, to the auditor of public accounts at the same time and in the same manner as provided by law that he shall

report and pay the state's revenue, stating for what estate paid, and in such form and containing such particulars as the auditor may prescribe; and for all such taxes collected by him and not paid to the auditor by the first day of March of each year he shall pay interest at the rate of ten per centum per annum. (Russ. Stats. (1909), p. 1525.)

**§ 634a. Refund Where Legacy Less Than Five Hundred Dollars.**

Sec. 6132. That whenever it shall be made to appear by affidavit or otherwise, to the satisfaction of the auditor of public accounts that any money has been paid under section 4281a of the Kentucky Statutes, where the amount of any legacy to any legatee was no more than five hundred dollars, and where said payment was made prior to the 27th day of October, 1908, the date of the decision of the court of appeals of Kentucky in Booth's Executor against the Commonwealth, the auditor of public accounts is hereby authorized and directed to draw his warrant on the treasurer of the state for the sum or sums so paid in favor of the person, whether executor or administrator or other persons who so paid the same. (This last section was adopted March 21, 1910: Acts of 1910, p. 95.)

## CHAPTER XXXIII.

## LOUISIANA STATUTE.

(*Laws of 1906, p. 173; 3 Wolff's Constitution and Revised Laws of 1904-08, pp. 769-778.*)

- § 635. Transfers Subject to Tax—Rates.
- § 636. Transfers not Subject to Tax.
- § 637. Taking Possession of Succession Without Authority of Court.
- § 638. Executor to Fix Amount of Tax.
- § 639. Collection of Tax.
- § 640. Liability of Executor—No Discharge Until Tax Paid.
- § 641. Duty of Heir When Administration not Ordered by Court.
- § 642. Payment of Tax.
- § 643. Sale of Property to Pay Tax.
- § 644. Liability of Heir for Legacy Tax.
- § 645. Search by Tax Collector.
- § 646. Appointment of Executor When Will Found.
- § 647. Procedure Where No Will Found.
- § 648. Proceedings by Heir or Legatee—Costs and Attorney Fee.
- § 649. Rights of Creditors Preserved.
- § 650. Tax on Entire Succession to be Paid When Accepted.
- § 651. Transfer or Delivery of Stocks, Deposits and Other Property.
- § 652. Burden of Proof to Establish Exemption.
- § 653. Jurisdiction of District Court.
- § 654. Curator Ad Hoc to Represent Nonresident and Unknown Heirs.
- § 655. Commissions of Tax Collector and Clerk of Court.
- § 656. Attorney to Assist Clerk of Court—Fees.
- § 657. Valuation of Annuities.
- § 658. Interest on Delinquent Tax.
- § 659. Costs to be Borne by Mass of Succession.

§ 635. Transfers Subject to Tax—Rates.

Sec. 1. Be it enacted by the general assembly of the state of Louisiana, That there is now and shall hereafter be levied, solely for the support of the public schools, on all inheritances, legacies and other donations mortis causa to or in favor of the direct descendants or ascendants of the decedent, a tax of two per centum, and on all such inheritances or dispositions to or in favor of the collateral relatives of the deceased, or strangers, a tax of five per centum on the amount or the actual cash value thereof at the time of the death of the decedent. (3 Wolff's Const. & Rev. Laws 1904-08, p. 769.)

§ 636. Transfers not Subject to Tax.

Sec. 2. Be it further enacted, etc., That said tax shall not be imposed in the following cases:

a. On any inheritance, legacy or other donation mortis causa to or in favor of any ascendant or descendant of the decedent below ten thousand dollars in amount or value.

b. On any legacy or other donation mortis causa to or in favor of an educational, religious or charitable institution.

c. When the property inherited, bequeathed or donated shall have borne its just proportion of taxes prior to the time of such donation, bequest or inheritance. (3 Wolff's Const. & Rev. Laws 1904-08, p. 769.)

**§ 637. Taking Possession of Succession Without Authority of Court.**

Sec. 3. Be it further enacted, etc., It shall be unlawful for any heir, legatee or other beneficiary of a donation mortis causa to take or be in possession of any part of the things or property composing the inheritance, legacy or other donation mortis causa, or to dispose of the same or any part thereof, until he shall have obtained the authority of the court to that effect, as hereafter provided; and in case he shall so take or be in possession or shall so dispose of such things or property, or any part thereof, he shall no longer have the right of renouncing such inheritance or donation mortis causa, and shall remain personally liable for the tax thereon; but he may, without waiting for authority do such acts as may seem necessary to preserve the property from waste, damage or loss. (3 Wolff's Const. & Rev. Laws 1904-08, p. 770.)

**§ 638. Executor to Fix Amount of Tax.**

Sec. 4. Be it further enacted, etc., The executor of the will of a person deceased, or the administrator of his succession, shall, after payment of his debts, proceed against the tax collector and all the heirs and legatees of the deceased summarily, by rule before the court which has jurisdiction of the succession, to fix the amount of tax due by each heir or legatee, and on trial thereof the court shall render judgment for the same against each heir or legatee, with interest and costs, as hereinafter provided. (3 Wolff's Const. & Rev. Laws 1904-08, p. 770.)

**§ 639. Collection of Tax.**

Sec. 5. Be it further enacted, etc., The executor or administrator shall thereupon pay to the tax collector the amount of tax, with interest and costs, so fixed, on each inheritance, legacy or donation, out of the funds comprised therein, if sufficient. Should there not be sufficient funds, the court shall, on the application of the heir or legatee, grant an order for the sale of the property composing such inheritance, legacy or donation, or so much thereof as may be necessary, for the purpose of paying such judgment. If the same be not paid by the heir or legatee, or an order of sale be not granted, as above provided, within thirty days after the date of the judgment, the court shall, on the application of the executor or administrator, grant an order of sale for the said purpose, as above provided, and the executor or administrator shall pay the said judgment out of the proceeds of the sale.

Such sale shall be made in such manner, and on such terms and conditions as the court shall prescribe, and the expense thereof shall be borne by the heir or legatee. (3 Wolff's Const. & Rev. Laws 1904-08, p. 770.)



**§ 640. Liability of Executor—No Discharge Until Tax Paid.**

Sec. 6. Be it further enacted, etc., No executor or administrator shall deliver any inheritance or legacy until the tax thereon shall be fixed and paid, as herein provided; otherwise he, together with his surety, shall be personally liable for said tax, with interest and cost. And no executor or administrator shall be discharged until it is shown that all taxes under this act, due by the heirs and legatees, have been paid, or until it is judicially determined by the process herein provided that no tax is due. (3 Wolff's Const. & Rev. Laws 1904-08, p. 771.)

**§ 641. Duty of Heir When Administration not Ordered by Court.**

Sec. 7. Be it further enacted, etc., In all cases in which an administration is not ordered by the court, the legal or instituted heir, or universal or residuary legatee, shall within six months after the death of the decedent, or, should there be a will, within the same time after the discovery of the same, present to the court a detailed descriptive list, sworn to and subscribed by him, of all items of property contained in and composing the estate of the decedent, and therein shall state the actual cash value of each such item at the time of the death of the decedent, and service thereof shall be made on the tax collector who shall have the right to traverse the same. Should the deceased have made special or particular legacies or donations mortis causa, the legatee shall also be served, and after summarily hearing the said parties the court shall fix the amount of tax due as aforesaid by each such heir or legatee, and shall render judgment therefor, with interest and cost, against each of them. (3 Wolff's Const. & Rev. Laws 1904-08, p. 771.)

**§ 642. Payment of Tax.**

Sec. 8. Be it further enacted, etc., In the same manner as provided in section 5, the heir or universal or residuary legatee shall thereupon pay or take measures for the payment of the tax due on all special or particular legacies or donations. (3 Wolff's Const. & Rev. Laws 1904-08, p. 771.)

**§ 643. Sale of Property to Pay Tax.**

Sec. 9. Be it further enacted, etc., The heir or universal or residuary legatee may likewise obtain an order for the sale of the property of his inheritance or legacy, or part thereof, for the purpose of paying the tax thereon. But if such tax be not paid, or such order of sale be not made within thirty days after the date of the judgment fixing the amount of the tax, a similar order for the same purpose shall be granted on the application of the tax collector, and thereunder any property forming part of the inheritance or legacy may be sold, and the proceeds thereof shall be applied to the payment of the tax with interest and costs. (3 Wolff's Const. & Rev. Laws 1904-08, p. 771.)

**§ 644. Liability of Heir for Legacy Tax.**

Sec. 10. Be it further enacted, etc., The heir or residuary or universal legatee shall not deliver any legacy until the tax thereon shall have been fixed

and paid; otherwise he shall be personally liable for the said tax, with interest and costs. (3 Wolff's Const. & Rev. Laws 1904-08, p. 772.)

**§ 645. Search by Tax Collector.**

Sec. 11. Be it further enacted, etc., If during the six months next following the death of any person leaving property, movable or immovable, within this state, an administration of his succession be not applied for, or his legal or instituted heir or universal or residuary legatee do not apply to the court to be placed in possession thereof, as herein provided, the court shall ex parte and on the application of the tax collector grant an order directing that a search be made for the will of the deceased by a notary public, and in aid of the same may order that all persons having in their possession or control any books, papers or documents of the deceased, or any bank box, safe deposit vault or other receptacle likely or designed to contain the same, shall open such receptacle and exhibit the contents thereof, as well as all other books, papers and documents of the deceased, to the said notary. (3 Wolff's Const. & Rev. Laws 1904-08, p. 772.)

**§ 646. Appointment of Executor When Will Found.**

Sec. 12. Be it further enacted, etc., Should the said notary find any document appearing to be the will of the deceased, he shall take possession of the same and produce it in court; and on application of the tax collector, or of any party in interest, the court shall proceed to the probate thereof, as now provided by law. If an executor be therein appointed, the person named shall be notified, and if he do not within ten days after notification accept the appointment, and if within the ten days next following this delay no person entitled to be appointed dative testamentary executor shall apply for the appointment, then the public administrator in the parish of Orleans, and in the other parishes the tax collector, shall be appointed dative testamentary executor of the said decedent, and the administration of his succession shall proceed as herein directed and according to existing law. (3 Wolff's Const. & Rev. Laws 1904-08, p. 772.)

**§ 647. Procedure Where No Will Found.**

Sec. 13. Be it further enacted, etc., If the notary can find no will, he shall report the fact to the court; and thereupon the tax collector shall proceed against the legal heir or heirs of the deceased summarily by rule to fix the amount of tax due by him or them, and each of the heirs shall be ordered, within a delay to be fixed by the court, which may be extended from time to time in the discretion of the court, to make and file a detailed descriptive list, sworn to and subscribed by him, of all the items of property contained in and composing the estate of the decedent, stating therein the actual cash value of each such item at the time of the death of the decedent, and the tax collector shall have a right to traverse the same. On trial of the rule the court shall fix the amount of tax due by each of the heirs, and shall render judgment for the same against each of them, and in such case, as well as in the cases mentioned in section 12, shall include in the costs payable by the

heir or legatee a fee of not more than ten per cent on the amount of tax due by each heir or legatee in favor of the attorney for the tax collector. In the same manner and under the same conditions as provided in sections 5 and 9 of this act, such heirs or legatees shall have the right to procure the sale of their inheritances or legacies for the purpose of paying the tax due thereon, with interest, costs and attorney's fees; and if payment thereof be not made by the heir or legatee, or if an order of sale, as above provided, be not granted, within thirty days after the date of the judgment, the tax collector shall be entitled to a similar order, and thereunder any property forming part of the inheritance or legacy may be sold. (3 Wolff's Const. & Rev. Laws 1904-08, p. 773.)

**§ 648. Proceedings by Heir or Legatee—Costs and Attorney Fee.**

Sec. 14. Be it further enacted, etc., Should there be more than one legal or instituted heir or universal or residuary legatee any one of them may institute the proceedings provided by this act, and the others shall be made parties thereto, and such heir shall be entitled to recover out of the mass of the succession one reasonable attorney's fee, besides his costs. (3 Wolff's Const. & Rev. Laws 1904-08, p. 773.)

**§ 649. Rights of Creditors Preserved.**

Sec. 15. Be it further enacted, etc., Nothing contained in this act shall affect the rights of creditors of persons deceased, or the rights of the creditors of the heirs or legatees of such persons, as established by the general law. (3 Wolff's Const. & Rev. Laws 1904-08, p. 773.)

**§ 650. Tax on Entire Succession to be Paid When Accepted.**

Sec. 16. Be it further enacted, etc., Each inheritance or legacy is indivisible, and must be accepted or renounced for the whole; and the heir or legatee shall not be entitled to be placed in possession of the same, and shall be without right or capacity to alienate any part thereof, until the tax on the whole shall have been fixed and paid, or until it shall have been judicially determined, in the manner herein provided, that no part of the same is subject to the tax imposed by this act. (3 Wolff's Const. & Rev. Laws 1904-08, p. 774.)

**§ 651. Transfer or Delivery of Stocks, Deposits and Other Property.**

Sec. 17. Be it further enacted, etc., No bank, banker, trust company, warehouseman, or other depositary and no person or corporation or partnership having on deposit or in possession or control any moneys, credits, goods or other things or rights of value for a person deceased, or in which he had any interest, and no corporation the stock or registered bonds of which are owned by a person deceased shall deliver or transfer such moneys, credits, stock, bonds or other things or rights of value to any heir or legatee of such deceased person, unless the tax due thereon under this act shall have been paid, or unless it be judicially determined in the manner herein prescribed that no tax is due by such heir or legatee. Otherwise the person or corporation so making delivery or transfer shall be liable for the said tax.

But the order of a court of competent jurisdiction, directing such delivery or transfer, shall be full authority for the same. (3 Wolff's Const. & Rev. Laws 1904-08, p. 774.)

**§ 652. Burden of Proof to Establish Exemption.**

Sec. 18. Be it further enacted, etc., The burden of proving facts establishing exemption from the tax imposed by this act is upon the person claiming exemption. (3 Wolff's Const. & Rev. Laws 1904-08, p. 774.)

**§ 653. Jurisdiction of District Court.**

Sec. 19. Be it further enacted, etc., The district court of the last domicile of the deceased, and in the parish of Orleans the civil district court, shall have original jurisdiction to hear and determine all the proceedings provided by this act. In the case of a nonresident decedent, the district court, or civil district court, of any parish in which he left property, movable or immovable, shall exercise such jurisdiction, and the court in which such proceedings shall be first begun shall have exclusive original jurisdiction thereof. (3 Wolff's Const. & Rev. Laws 1904-08, p. 774.)

**§ 654. Curator Ad Hoc to Represent Nonresident and Unknown Heirs.**

Sec. 20. Nonresidents and unknown heirs and legatees, and those whose whereabouts are unknown, shall be represented by curator ad hoc appointed by the court, and all notices, citations and demands prescribed by this act shall be served on such officers. Though there be in any case more than one unknown or absent heir or legatee, all may be represented by the same curator. (3 Wolff's Const. & Rev. Laws 1904-08, p. 775.)

**§ 655. Commissions of Tax Collector and Clerk of Court.**

Sec. 21. Be it further enacted, etc., The tax collector spoken of and intended by this act is the sheriff and ex-officio tax collector of the parish in which was the last residence of the decedent, or in which is situated property of a nonresident decedent, and in the parish of Orleans the clerk of the civil district court. They shall receive a commission of two per cent on their collections of taxes under this act. (3 Wolff's Const. & Rev. Laws 1904-08, p. 775.)

**§ 656. Attorney to Assist Clerk of Court—Fees.**

Sec. 22. Be it further enacted, etc., In and for the parish of Orleans the governor shall appoint, by and with the advice and consent of the senate, for a term of four years, an attorney at law, whose duty it shall be to advise, assist and represent the clerk of the civil district court in the enforcement of this act. For his services, except as provided in sections 12 and 13, he shall receive a fee of four per cent on all taxes collected hereunder, payable out of the same before transmission to the treasury. In all other parishes of the state the said duties shall be performed by the attorneys appointed under existing law to assist the tax collectors in the collection of delinquent licenses, and the compensation of such attorneys shall be as above provided. (3 Wolff's Const. & Rev. Laws 1904-08, p. 775.)

**§ 657. Valuation of Annuities.**

Sec. 23. Be it further enacted, etc., In fixing the value of any legacy or donation mortis causa which consists in whole or in part of an annuity or usufruct or right of use or habitation, the court shall consider the expectancy of life of the legatee or donee according to the table known as the American Experience Table of Mortality, at six per cent per annum compound interest. (3 Wolff's Const. & Rev. Laws 1904-08, p. 775.)

**§ 658. Interest on Delinquent Tax.**

Sec. 24. Be it further enacted, etc., The taxes hereby levied shall bear interest at the rate of two per cent per month, beginning six months after the death of the decedent; saving to any heir, legatee or donee the right to stop the running of interest against him by paying the amount of his tax with accrued interest, or by tendering the same to the tax collector in the manner prescribed by the general law; provided, however, that in cases in which the settlement of the succession is not unduly delayed, or in which the right of any party to receive an inheritance or legacy is contested, and in all cases in which the failure to pay tax on any legacy or inheritance within the period aforesaid is not imputable to the laches of the heir or legatee, the court may, in its discretion, remit such interest. (3 Wolff's Const. & Rev. Laws 1904-08, p. 776.)

**§ 659. Costs to be Borne by Mass of Succession.**

Sec. 25. Be it further enacted, etc., The costs of all proceedings under this act shall be borne by the mass of the succession; provided, that in cases in which it seems to him equitable to do so the judge shall have the power to apportion the costs among the several parties, or allow any party to retain his costs out of any sum found to be due by him for tax hereunder. Provided, the provisions of this act shall affect all successions not finally closed, or in which the final account has not been filed. (3 Wolff's Const. & Rev. Laws 1904-08, p. 776.)

## CHAPTER XXXIV.

### MAINE STATUTE.

*(Revised Statutes of 1903, p. 151; Laws of 1905, p. 131; Laws of 1909, p. 185; Laws of 1911, p. 173.)*

- § 660. Transfers Subject to Tax—Rates—Persons Liable.
- § 661. Estates for Years or for Life and Remainders.
- § 662. Bequests to Executor in Lien of Compensation.
- § 663. Time for Payment of Tax—Interest—Lien.
- § 664. Liability of Executor.
- § 665. Collection of Tax by Executor.
- § 666. Legacies Charged upon Real Estate.
- § 667. Legacies for a Limited Period.
- § 668. Sale of Property to Pay Tax.
- § 669. Account of Executor not Settled Until Tax Paid.
- § 670. Filing Copies of Inventory.
- § 671. Executor to Inform Board of Assessors of the Transfer.
- § 672. Refunding Excess Payments.
- § 673. Appraisement and Valuation of Property.
- § 674. Jurisdiction of Probate Court and Proceedings Therein.
- § 675. Fees of Judges or Registers of Probate.
- § 676. Definitions of Terms.
- § 677. Attorney General to be Furnished Lists of Estates and Investigate Same.
- § 678. Application By Attorney General for Appointment of Administrator.
- § 679. Failure of Executor to File Inventory.
- § 680. Property Subject to Tax in Another State or Country.
- § 681. Report of Deaths to Attorney General.
- § 682. Stock in Corporations Organized in Two or More States.
- § 683. Transfers of Stocks, Bonds, etc., not Subject to Tax.
- § 684. Transfer of Stocks, etc., of Nonresident Decedent.
- § 685. Delivery or Transfer of Assets of Nonresident Without Payment of Tax.
- § 686. Proceedings to Recover Tax.
- § 687. Retrospective Operation of Statute.
- § 688. Payment of Funds to State Treasurer.

#### § 660. Transfers Subject to Tax—Rates—Persons Liable.

Sec. 69. All property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which shall pass by will, by the intestate laws of this state, by allowance of a judge of probate to a widow or child by deed, grant, sale or gift, except in cases of a bona fide purchase for full consideration in money or money's worth, and except as herein otherwise provided, made or intended to take effect in possession or enjoyment

after the death of the grantor, to any person in trust or otherwise, except to or for the use of any educational, charitable, religious or benevolent institution in this state, the property of which is by law exempt from taxation, shall be subject to an inheritance tax for the use of the state as hereinafter provided. Property which shall so pass to or for the use of (class A) the husband, wife, lineal ancestor, lineal descendant, adopted child, the adoptive parent, the wife or widow of a son, or the husband of a daughter of a decedent, shall be subject to a tax upon the value of each bequest, devise or distributive share, in excess of the exemption hereinafter provided, of one per cent if such value does not exceed fifty thousand dollars, one and one-half per cent if such value exceeds fifty thousand dollars and does not exceed one hundred thousand dollars, and two per cent if such value exceeds one hundred thousand dollars; the value exempt from taxation to or for the use of a husband, wife, father, mother, child, adopted child or adoptive parent shall in each case be ten thousand dollars, and the value exempt from taxation to or for the use of any other member of (class A) shall in each case be five hundred dollars. Property which shall so pass to or for the use of (class B) a brother, sister, uncle, aunt, nephew, niece or cousin of decedent, shall be subject to a tax upon the value of each bequest, devise or distributive share in excess of five hundred dollars, and the tax of this class shall be four per cent of its value for the use of the state if such value does not exceed fifty thousand dollars, four and one-half per cent if its value exceeds fifty thousand dollars and does not exceed one hundred thousand dollars and five per cent if its value exceeds one hundred thousand dollars. Property which shall pass to or for the use of any others than members of class A, class B and the institutions excepted in the first sentence of this section, shall be subject to a tax upon the value of each bequest, devise or distributive share in excess of five hundred dollars, and the tax of this class shall be five per cent of its value for the use of the state if such value does not exceed fifty thousand dollars, six per cent if its value exceeds fifty thousand and does not exceed one hundred thousand dollars and seven per cent if its value exceeds one hundred thousand dollars. Administrators, executors and trustees, and any grantees under such conveyances made during the grantor's life shall be liable for such taxes, with interest, until the same have been paid. (Rev. Stats. 1903, p. 151; Laws 1909, p. 184; Laws 1911, p. 173, approved March 30, 1911.)

**§ 661. Estates for Years or for Life and Remainders.**

Sec. 70. Whenever property shall descend by devise, descent, bequest or grant to a person for life or for a term of years and the remainder to another, except to or for the use of any educational, charitable, religious or benevolent institution in this state, the value of the prior estate shall be determined by the Actuaries' Compound Experience Tables at four per cent compound interest and a tax imposed at the rate prescribed in the preceding section for the class to which the devisee, legatee or grantee of such estate belongs and a tax shall be imposed at the same time upon the remaining value of such property at the rate prescribed in said section for the class to which the devisee, legatee or grantee of such remainder belongs, subject

to the exemptions provided in the preceding section. (Rev. Stats. 1903, p. 151; Laws 1909, p. 185, approved April 1, 1909.)

**§ 662. Requests to Executor in Lieu of Compensation.**

Sec. 71. Whenever a decedent appoints one or more executors or trustees, and in lieu of their allowance makes a bequest or devise of property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies exceed a reasonable compensation for their services, such excess shall be liable to such tax, and the court of probate having jurisdiction of their accounts shall determine the amount of such reasonable compensation. (Laws 1903, p. 151.)

**§ 663. Time for Payment of Tax—Interest—Lien.**

Sec. 72. All taxes imposed by section sixty-nine upon the estates of deceased residents of this state shall be payable to the treasurer of state and all taxes imposed by said section sixty-nine upon the estates of nonresident decedents to the attorney general by the executors, administrators or trustees at the expiration of two years after the granting of letters testamentary or of administration; but if legacies or distributive shares are paid within two years, the tax thereon shall be payable at the same time; and if the same are not so paid, interest at the rate of six per cent a year shall be charged and collected from the time the same became payable; but no such tax upon estates of residents or inhabitants of this state shall be accepted except upon presentation of a certificate from a probate court showing the amount of such tax due. It shall be the duty of the personal representative of said deceased to petition the probate court having jurisdiction to assess such taxes before the payment of any such legacies or distributive shares, and before the expiration of two years after the granting of letters aforesaid. The register of probate shall send by registered mail, a copy of such petition to the attorney general at least seven days before the hearing thereon unless the attorney general in writing waives the same.

If no such petition is filed within the time limited, the attorney general may file a similar petition, of which, unless notice is waived, at least fourteen days' notice shall be given such personal representative or his agent. In either case the attorney general may appear and be heard upon the assessment of such tax and an appeal may be had from the decree of the judge of probate by either party. Real estate of which the decedent died seized or possessed, subject to taxes as aforesaid shall be charged with a lien for all such taxes and interest, which lien may be discharged by the payment of all taxes due and to become due upon said real estate or separate parcel thereof, or by an order or decree of the probate court discharging said lien, said order or decree to be granted by the probate court upon the deposit with said court of a sum of money or a bond, sufficient to secure to the state the payment of any tax due or to become due on said real estate. Orders or decrees discharging such lien may be recorded in the registry of deeds in the county where said real estate is located. (Rev. Stats. 1903, p. 152; Laws 1909, p. 186; Laws 1911, p. 175, approved March 30, 1911.)



**§ 664. Liability of Executor.**

Sec. 73. After failure to pay such tax, as provided in the preceding section, such an administrator, executor or trustee is liable to the state on his administration bond for such tax and interest, and an action shall lie thereon without the authority of the judge of probate; or an action of debt may be maintained in the name of the state against any such administrator, executor or trustee, or any such grantee, for such tax and interest. But if such administrator, executor or trustee, after being duly cited therefor, refuses or neglects to return his inventory or to settle an account, by reason whereof the judge of probate cannot determine the amount of such tax, such administrator, executor or trustee shall be liable to the state on his administration bond for all damages occasioned thereby. (Rev. Stats. 1903, p. 152.)

**§ 665. Collection of Tax by Executor.**

Sec. 74. Any administrator, executor or trustee, having in charge or trust any property subject to such tax, shall deduct the tax therefrom, or shall collect the tax thereon, and interest chargeable under section seventy-two from the legatee or person entitled to said property, and he shall not deliver any specific legacy or property subject to said tax to any person until he has collected the tax thereon. (Rev. Stats. 1903, p. 152.)

**§ 666. Legacies Charged upon Real Estate.**

Sec. 75. Whenever any legacies subject to said tax shall be charged upon or payable out of any real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay it to the executor, administrator or trustee, and the same shall remain a charge upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator or trustee, in the same manner as the payment of the legacy itself could be enforced. (Rev. Stats. 1903, p. 152.)

**§ 667. Legacies for a Limited Period.**

Sec. 76. If any such legacy be given in money to any person for a limited period, such administrator, executor or trustee shall retain the tax on the whole amount; but if it be not in money, he shall make an application to the judge of probate having jurisdiction of his accounts to make an apportionment, if the case requires it, of the sum to be paid into his hands by such legatee on account of said tax and for such further order as the case may require. (Rev. Stats. 1903, p. 152.)

**§ 668. Sale of Property to Pay Tax.**

Sec. 77. All administrators, executors and trustees shall have power to sell so much of the estate of the deceased as will enable them to pay said tax in the same manner as they may be empowered to do for the payment of his debts. (Rev. Stats. 1903, p. 152.)

**§ 669. Account of Executor not Settled Until Tax Paid.**

Sec. 78. No final settlement of the account of any executor, administrator or trustee shall be accepted or allowed by any judge of probate unless

it shall show, on oath or affirmation of the accountant, and the judge of said court shall find, that all taxes, imposed by the provisions of section sixty-nine, upon any property or interest therein belonging to the estate to be settled by said account, shall have been paid, and the receipt of the treasurer of state for such tax shall be the proper voucher for such payment. (Rev. Stats. 1903, p. 152.)

**§ 670. Filing Copies of Inventory.**

Sec. 79. A copy of the inventory of every estate, any part of which may be subject to a tax under the provisions of section sixty-nine, or if the same can be conveniently separated, then a copy of such part of such inventory with the appraisal thereof, shall be sent by mail by the register or the judge of the court of probate in which such inventory is filed to the attorney general within ten days after the same is filed. The fees for such copy shall be paid by the executor, administrator or trustee, and allowed in his account. (Rev. Stats. 1903, p. 153; Laws 1909, p. 187, approved April 1, 1909.)

**§ 671. Executor to Inform Board of Assessors of the Transfer.**

Sec. 80. Whenever any of the real estate of a decedent shall so pass to another person as to become subject to said tax, the executor, administrator or trustee of the decedent shall inform the board of state assessors thereof within six months after he has assumed the duties of his trust, or if the fact is not known to him within that time, then within one month after it does become known to him. (Rev. Stats. 1903, p. 153.)

**§ 672. Refunding Excess Payments.**

Sec. 81. Whenever for any reason the devisee, legatee or heir who has paid any such tax shall refund any portion of the property on which it was paid, or it shall be judicially determined that the whole or any part of such tax ought not to have been paid, said tax, or the due proportional part of said tax, shall be paid back to him by the executor, administrator or trustee. (Rev. Stats. 1903, p. 153.)

**§ 673. Appraisement and Valuation of Property.**

Sec. 82. The value of such property as may be subject to said tax shall be its actual market value as found by the judge of probate, after public notice or personal notice to the board of state assessors and all persons interested in the succession to said property, or the board of state assessors or any of said persons interested may apply to the judge of probate having jurisdiction of the estate and on such application the judge shall appoint three disinterested persons, who, being first sworn, shall view and appraise such property at its actual market value for the purposes of said tax, and shall make return thereof to said probate court, which return may be accepted by said court in the same manner as the original inventory of such estate is accepted, and if so accepted it shall be binding upon the person by whom such tax is to be paid, and upon the state. And the fees of the appraisers shall be fixed by the judge of probate and paid by the executor,

administrator or trustee. (Rev. Stats. 1903, p. 153; Laws 1909, p. 187, approved April 1, 1909.)

**§ 674. Jurisdiction of Probate Court and Proceedings Therein.**

Sec. 83. The court of probate, having either principal or ancillary jurisdiction of the settlement of the estate of the decedent, shall have jurisdiction to hear and determine all questions in relation to said tax that may arise affecting any devise, legacy or inheritance under this chapter, subject to appeal as in other cases, and the attorney general shall represent the interests of the state in any such proceedings. The judge of probate, having jurisdiction as aforesaid, shall fix the time and place for hearing and determining such questions and shall give public notice thereof and personal notice to the executor, administrator or trustee. Appeals in behalf of the estate shall be taken in the name of the executor, administrator or trustee and service upon the attorney general shall be sufficient. When appeals are taken by the state, service shall be made upon the executor, administrator or trustee. (Rev. Stats. 1903, p. 153; Laws 1909, p. 187, approved April 1, 1909.)

**§ 675. Fees of Judges or Registers of Probate.**

Sec. 84. The fees of judges or registers of probate for the duties required of them by the fifteen preceding sections shall be, for each order, appointment, decree, judgment, or approval of appraisal or report required hereunder, fifty cents, and for copies of records, the fees that are now allowed by law for the same. And the administrators, executors, trustees or other persons paying said tax shall be entitled to deduct the amount of all such fees paid to the judge or register of probate from the amount of said tax to be paid to the treasurer of state. (Rev. Stats. 1903, p. 153.)

**§ 676. Definitions of Terms.**

Sec. 85. In the foregoing sections relating to inheritances, the word "person" shall be construed to include bodies corporate as well as natural persons; the word "property" shall be construed to include both real and personal estate, and any form of interest therein whatsoever, including annuities. (Rev. Stats. 1903, p. 154; Laws 1909, p. 188, approved April 1, 1909.)

**§ 677. Attorney General to be Furnished Lists of Estates and Investigate Same.**

Sec. 86. The registers of probate in the several counties shall deliver to the attorney general, on or before the first day of June in each year, a list of all estates in which it appears from the record that some part of said estate may be liable to an inheritance tax, and in which a will has been offered for probate or administration granted for more than one year prior to the time of filing such list, and in which no inheritance tax has been assessed or paid.

Said list shall contain the name of the deceased, the date of the administration granted, and the name and residence of the administrator or executor.

The attorney general shall promptly investigate all cases so reported, by notifying the executor, administrator, trustee, heir or devisee, and in such other manner as he may determine, and if it appears to him that in any such case an inheritance tax is due to the state and has not been paid to the state, he shall, unless said tax is paid to the state, within thirty days after notice from him to the executor, administrator, trustee, heir or devisee that the same is due, cite the executor, administrator, trustee, heir or devisee, whose duty it is to pay said tax, before the proper probate court in such manner as is provided for the citation of trust officers in probate proceedings, and shall take all other action necessary to secure the payment of said tax.

In such proceedings the attorney general shall recover costs to be fixed and determined by the judge of probate in his discretion, which costs may be retained by said attorney general for his own use and shall be additional to any salary allowed to him by law. (Rev. Stats. 1905, p. 131; Laws 1909, p. 185, approved April 1, 1909.)

#### § 678. Application by Attorney General for Appointment of Administrator.

Sec. 87. If, upon the decease of a person leaving an estate liable to pay an inheritance tax, a will disposing of such estate is not offered for probate, or an application for administration made within six months after such decease, the proper probate court, upon application by the attorney general, shall appoint an administrator for such estate, and it shall be the duty of the attorney general, when such case is brought to his attention to petition for administration on such estate, and the judge in his discretion may appoint such attorney general or other suitable person as such administrator, and said attorney general shall be entitled to costs as in other probate proceedings. (Rev. Stats. 1905, p. 132; Laws 1909, p. 186, approved April 1, 1909.)

#### § 679. Failure of Executor to File Inventory.

Sec. 88. If any executor, administrator or trustee neglects or refuses to file an inventory of the estate under his charge within three months from the date of the warrant of appraisal, unless such time be extended by the judge of probate, he shall be cited to file such inventory by the judge of probate and if he neglects or refuses to file such inventory within sixty days thereafter he shall be liable to a penalty of not more than five hundred dollars which shall be recovered in an action of debt by the attorney general for the use of the state and the register of probate shall notify the attorney general of the failure of any executor, administrator or trustee to file an inventory as above provided. (Rev. Stats. 1909, p. 188; Laws 1911, p. 176, approved March 30, 1911.)

#### § 680. Property Subject to Tax in Another State or Country.

Sec. 89. Property belonging to a deceased resident of this state which shall be distributed by order of the probate court subsequent to the passage of this act, and which is not therein at the time of his death shall not be taxable under the provisions of this chapter if legally subject in another state or country to a tax of like character and amount to that imposed by

section sixty-nine and if such tax be actually paid or guaranteed or secured in accordance with the laws of such other state or country; if legally subject in another state or country to a tax of like character, but of less amount than that imposed by section sixty-nine and such tax be actually paid, guaranteed or secured as aforesaid, such property shall be taxable under the provisions of section sixty-nine to the extent of the difference between the tax thus actually paid, guaranteed or secured and the amount for which such property would otherwise be liable under this chapter. Property of nonresident decedent which is within the jurisdiction of the state at the time of his death if subject to a tax by the law of the state or country of his residence, of like character with that imposed by this chapter, shall be subject only to such portion of the tax imposed hereunder as may be in excess of such tax imposed by the laws of such state or country. (Rev. Stats. 1909, p. 188, approved April 1, 1909.)

**§ 681. Report of Deaths to Attorney General.**

Sec. 90. Clerks of cities and towns shall report to the attorney general the names of all persons dying within their respective municipalities who in the judgment of said clerks leave estates the value whereof exceeds five hundred dollars, together with the names of husband, wife and next of kin so far as known to him; such report shall be mailed to the attorney general within ten days of the time when the certificate of death is filed with such clerk, and a fee of twenty-five cents shall be paid said clerk by the state therefor. The attorney general shall prepare and furnish blanks for such returns. (Rev. Stats. 1911, p. 176.)

**§ 682. Stock in Corporations Organized in Two or More States.**

Sec. 91. When the personal estate passing from any person, not an inhabitant or resident of this state, as provided in section sixty-nine of chapter eight of the Revised Statutes, shall consist in whole or in part of shares of any railroad, or street railway company or telegraph or telephone company incorporated under the laws of this state and also of some other state or country, so much only of each share as is proportional to the part of such company's lines lying within this state shall be considered as property of such person within the jurisdiction of this state for the purposes of this chapter. (Rev. Stats. 1911, p. 176, approved March 30, 1911.)

**§ 683. Transfers of Stocks, Bonds, etc., not Subject to Tax.**

Sec. 92. When the personal estate passing from any deceased person not an inhabitant or resident of this state, as provided in section sixty-nine, shall consist of the stocks, bonds or other debt or certificate of indebtedness of any corporation organized under the laws of Maine, no collateral inheritance tax shall be assessed upon the same unless said corporation shall at the time of such decease have tangible property within the state exceeding one thousand dollars in value. The attorney general upon satisfactory evidence and payment of a fee of five dollars to the use of the state shall file a certificate in the office of the secretary of state that any such corporation has not tangible property within the state exceeding one thousand dollars in value. Such certificate may at any time after notice and upon

satisfactory evidence, be revoked. A copy of the certificate of revocation shall be sent to the clerk, and to any stock registrar or transfer agent whose name is on file with said secretary. Until the receipt of such certificate of revocation any such stock registrar or transfer agent may lawfully transfer the stock of said corporation and perform all other duties incident to his office. (Rev. Stats. 1911, p. 177, approved March 30, 1911.)

**§ 684. Transfer of Stocks, etc., of Nonresident Decedent.**

Sec. 93. Subject to the provisions of section ninety-two if a foreign executor, administrator or trustee assigns or transfers any stock in any national bank located in this state or in any corporation organized under the laws of this state, owned by a deceased nonresident at the date of his death and liable to a tax under the provisions of this chapter, the tax shall be paid to the attorney general at the time of such assignment or transfer; and if it is not paid when due, such executor, administrator or trustee shall be personally liable therefor until it is paid. Subject to the provisions of section ninety-two a bank located in this state or a corporation organized under the laws of this state which shall record a transfer of any share of its stock made by a foreign executor, administrator or trustee, or issue a new certificate for a share of its stock at the instance of a foreign executor, administrator or trustee before all taxes imposed thereon by the provisions of this chapter have been paid, shall be liable for such tax in an action of debt brought by the attorney general. (Rev. Stats. 1911, p. 177, approved March 30, 1911.)

**§ 685. Delivery or Transfer of Assets of Nonresident Without Payment of Tax.**

Sec. 94. Subject to the provisions of section ninety-two no person or corporation shall deliver or transfer any securities or assets belonging to the estate of a nonresident decedent to anyone unless authority to receive the same shall have been given by a probate court of this state, and upon satisfactory evidence that all inheritance taxes provided for by this chapter have been paid, guaranteed or secured as hereinbefore provided. Any person or corporation that delivers or transfers any securities or assets in violation of the provisions of this section shall be liable for such tax in an action of debt brought by the attorney general. (Rev. Stats. 1911, p. 177, approved March 30, 1911.)

**§ 686. Proceedings to Recover Tax.**

Sec. 95. The attorney general shall promptly commence proceedings for the recovery of any of said taxes within six months after the same became payable; and shall commence the same when the judge of a probate court certifies to him that the final account of an executor, administrator or trustee has been filed in such court, and that the settlement of the estate is delayed because of the nonpayment of said tax. The judge of the probate court shall so certify upon the application of any heir, legatee or other person interested therein, and may extend the time of payment of said tax whenever the circumstances of the case require. (Rev. Stats. 1911, p. 178, approved March 30, 1911.)

**§ 687. Retrospective Operation of Statute.**

**Sec. 96.** This act shall not apply to estates of persons deceased prior to the date of taking effect of the same, nor to property passing by deed, grant, sale or gift made prior to said date, but said estates and property shall remain subject to the provisions of law in force prior to the taking effect of this act. (Rev. Stats. 1911, p. 178, approved March 30, 1911.)

**§ 688. Payment of Funds to State Treasurer.**

**Sec. 97.** All moneys received by the attorney general as taxes collected under the provisions of this chapter shall be by him forthwith paid to the state treasurer. (Rev. Stats. 1911, p. 178, approved March 30, 1911.)

# CHAPTER XXXV.

## MARYLAND STATUTE.

(2 General Laws of 1904, pp. 1835-1842; Laws of 1908, pp. 232, 239.)

- § 689. Transfers Subject to Tax—Rates—Exemptions.
- § 690. Payment of Tax by Executor.
- § 691. Valuation of Personalty—Sale of Property to Pay Tax.
- § 692. Failure of Executor to Pay Tax Within Thirteen Months.
- § 693. Appointment of Appraisers of Real Estate.
- § 694. Warrant to Appraisers of Real Estate.
- § 695. Appraisement of Property Lying in More Than One County.
- § 696. Inventory of Real Estate.
- § 697. Death or Refusal of Appraiser to Act.
- § 698. Return of Inventory of Real Estate.
- § 699. Appraisement Deemed to be True Value of Real Estate.
- § 700. Lien of Tax.
- § 701. Collection of Tax—Sale of Real Estate.
- § 702. Estates for Life or for Years and Remainders.
- § 703. Determination of Value of Estate Less Than Absolute Interest.
- § 704. Sale of Property to Pay Tax.
- § 705. Liability of Executor on Bond.
- § 706. Revocation of Executor's Letters for Failure to Perform Duties.
- § 707. Powers and Duties of Administrator De Bonis Non.
- § 708. Proceedings Where No Administration Taken Out.
- § 709. Failure of Persons Entitled to Take Out Administration.
- § 710. Application for Letters—Inquiry as to Real Estate.
- § 711. Receipts for Payment of Tax.
- § 712. Payment to Treasurer—Commissions of Clerks and Registers of Wills.
- § 713. Failure of Clerks or Registers to Account.

### § 689. Transfers Subject to Tax—Rates—Exemptions.

Sec. 117. All estates, real, personal and mixed, money, public and private securities for money of every kind passing from any person who may die seised and possessed thereof, being in this state, or any part of such estate or estates, money or securities, or interest therein, transferred by deed, will, grant, bargain, gift or sale, made or intended to take effect in possession after the death of the grantor, bargainor, deviser or donor, to any person or persons, bodies politic or corporate, in trust or otherwise, other than to or for the use of the father, mother, husband, wife, children and lineal descendants of the grantor, bargainor or testator, donor or intestate, shall be subject to a tax of five per centum in every hundred dollars of the clear value of such estate, money or securities; and all executors and administrators shall only be discharged from liability for the amount of such tax, the payment of which they be charged with, by paying the same for the use of this state, as hereinafter directed; provided, that no estate which may be



valued at a less sum than five hundred dollars shall be subject to the tax imposed by this section. (2 Pub. Gen. Laws 1904, p. 1835; Laws 1908, p. 238.)

**§ 690. Payment of Tax by Executor.**

Sec. 118. Every executor or administrator, to whom administration may be granted, before he pays any legacy, or distributes the shares of any estate liable to the tax imposed by the preceding section, shall pay to the register of wills of the proper county or city, two and a half per centum of every hundred dollars he may hold for distribution among the distributees or legatees, and at that rate for any less sum, for the use of the state; this section shall not be construed so as to release any tax already fixed on any collateral inheritance, distributive share or legacy. (2 Pub. Gen. Laws 1904, p. 1835.)

**§ 691. Valuation of Personalty—Sale of Property to Pay Tax.**

Sec. 119. When any species of property other than money or real estate shall be subject to said tax, the tax shall be paid on the appraised value thereof as filed in the office of the register of wills of the proper county or city; and every executor shall have power, under the order of the orphans court, to sell, if necessary, so much of said property as will enable him to pay said tax. (2 Pub. Gen. Laws 1904, p. 1836.)

**§ 692. Failure of Executor to Pay Tax Within Thirteen Months.**

Sec. 120. Every executor or administrator shall, within thirteen months from the date of his administration, pay said tax on distributive shares and legacies in his hands, and on failure to do so he shall forfeit his commissions. (2 Pub. Gen. Laws 1904, p. 1836.)

**§ 693. Appointment of Appraisers of Real Estate.**

Sec. 121. In all cases where real estate of any kind is subject to the said tax, the orphans court of the county in which administration is granted shall appoint the same persons who may have been appointed to value the personal estate to appraise and value all the real estate of the deceased within the state. (2 Pub. Gen. Laws 1904, p. 1836.)

**§ 694. Warrant to Appraisers of Real Estate.**

Sec. 122. The form of the warrant to such appraisers shall be the same as to appraisers of personal property, except that the words "real estate" shall be inserted therein instead of the words "goods, chattels and personal estate," and the words "price of property" instead of the word "article," and the appraisers shall take the oath prescribed for appraisers of personal estate, except that the words "real estate" shall be substituted for the words "goods, chattels and personal estate," and their duties and proceedings shall, in every respect, be the same as those of the appraisers of personal estate. (2 Pub. Gen. Laws 1904, p. 1836.)

**§ 695. Appraisement of Property Lying in More Than One County.**

Sec. 123. If the estate or property lies in more than one county, and it is not convenient for the appraisers to visit the other county, the court may appoint two appraisers in said county. (2 Pub. Gen. Laws 1904, p. 1836.)

**§ 694. Inventory of Real Estate.**

Sec. 124. The inventory of the real estate shall be entirely separate and distinct from that of the personal estate. (2 Pub. Gen. Laws 1904, p. 1837.)

**§ 697. Death or Refusal of Appraiser to Act.**

Sec. 125. On the death or refusal of any appraiser to act, the court may appoint another in his place. (2 Pub. Gen. Laws 1904, p. 1837.)

**§ 698. Return of Inventory of Real Estate.**

Sec. 126. The appraisers shall return the inventory, when completed, to the executor or administrator, whose duty it shall be to return the same to the office of the register of wills, to which the inventory of the personal estate is returnable, and within the same time and under like penalty, and shall make oath that said inventory or inventories is or are a true and perfect inventory or inventories of all the real estate of the deceased, within this state, that has come to his knowledge, and that, should he thereafter discover any other real estate belonging to the deceased, in this state, he will return an additional inventory thereof. (2 Pub. Gen. Laws 1904, p. 1837.)

**§ 699. Appraisement Deemed to be True Value of Real Estate.**

Sec. 127. The appraisement thus made shall be deemed and taken to be the true value of the said real estate upon which the said tax shall be paid. (2 Pub. Gen. Laws 1904, p. 1837.)

**§ 700. Lien of Tax.**

Sec. 128. The amount of said tax shall be a lien on said real estate for the period of four years from the date of the death of the decedent, who shall have died seised and possessed thereof. (2 Pub. Gen. Laws 1904, p. 128.)

**§ 701. Collection of Tax—Sale of Real Estate.**

Sec. 129. The executor or administrator shall collect the same from the parties liable to pay said tax or their legal representatives within thirteen months from the date of his administration, and pay the same to the register of wills of the county or city in which administration is granted; and if the said parties shall neglect or fail to pay the same within that time, the orphans court of the said county or city shall order the executor or administrator to sell for cash so much of said real estate as may be necessary to pay said tax and all the expenses of said sale, including the commissions of the executor or administrator thereon; and after the report of said sale, the ratification thereof and the payment of the purchase money, the executor or administrator may execute a valid deed for the estate sold, and not before; provided, however, that nothing in this section contained shall be construed to confer authority on the orphans court to order the sale of any real estate for the satisfaction of collateral inheritance tax after the expiration of four years from the date of the death of the decedent, who shall have died seised and possessed of said real estate. (2 Pub. Gen. Laws 1904, p. 1837.)

**§ 702. Estates for Life or for Years and Remainders.**

Sec. 130. Whenever any estate, real, personal or mixed, of a decedent shall be subject to the tax mentioned in the thirteen preceding sections, and there be a life estate or interest for a term of years, or a contingent interest, given to one party and the remainder, or reversionary interest, to another party, the orphans court of the county or city in which administration is granted shall determine in its discretion and at such time as it shall think proper what proportion the party entitled to said life estate, or interest for a term of years, or contingent interest, shall pay of said tax, and the judgment of said court shall be final and conclusive, and the party entitled to said life estate or interest for a term of years, or other contingent interest, shall within thirty days after the date of such determination pay to the register of wills his proportion of said tax; and thereafter the said court shall from time to time after the determination of the preceding estate and as the remainder of said estate shall vest in the party or parties entitled in remainder or reversion determine in its discretion what proportion of the residue of said tax shall be paid by the party or parties in whom the estate shall so vest; and the judgment of the said court shall be final and each of the parties successively entitled in remainder or reversion shall pay his proportion of said tax to the register of wills within thirty days after the date of such determination as to him; and the proportion of the tax so determined to be paid by the party entitled to the life interest or estate shall be and remain a lien upon such interest or estate for the period of four years after the date of the death of the decedent, who shall have died seised and possessed of the property; and the proportion of the tax so determined to be paid by the persons respectively entitled to the remainder, or reversionary interest, shall be a lien on such interest for the period of four years from the date of which such interest shall vest in possession. (2 Pub. Gen. Laws 1904, p. 1838.)

**§ 703. Determination of Value of Estate Less Than Absolute Interest.**

Sec. 131. Whenever an interest in any estate, real, personal, or mixed, less than an absolute interest, shall be devised or bequeathed to or for the use and benefit of any person or object, not exempted from the tax under section 117, then only such interest so devised or bequeathed shall be liable for said tax; and it shall be the duty of the orphans court of the county or city in which administration is granted, or any other court assuming jurisdiction over such administration, to determine as soon after administration is granted as possible, on application of such person or object, the value of such interest liable for said tax, by deducting from the whole value of the estate so much thereof as shall be the value of the interest therein of any person who, under said section 117, is exempt from said tax, and the residue thereof shall be the value of said interest upon which said tax is payable; and said tax so ascertained shall be paid by such person or object within ninety days from such ascertainment, with interest thereon at six per cent, per annum, after the expiration of twelve months from the date of the death of the decedent, under whose will or

by whose intestacy said interest is acquired, if said tax has not sooner been paid, or within ninety days from the time that it shall be ascertained that such person or object shall be entitled to any such interest in any estate; but such tax shall bear interest at the rate of six per cent per annum from the expiration of twelve months from said death; but if such person or object shall at the time when he, she or it comes into possession of such estate, pay a tax as provided for in said section 117, on the whole value thereof. (2 Pub. Gen. Laws 1904, p. 1839.)

**§ 704. Sale of Property to Pay Tax.**

Sec. 132. If any of the parties mentioned in sections 129 and 130 shall refuse or neglect to pay the several proportions so decreed by the orphans court within thirty days from the time of such decree, the court shall order and direct the executor or administrator to sell all the right, title and interest of such party in and to said estate or property, or so much thereof as the court may deem necessary, to pay his proportion of said tax and all expenses of sale; provided, however, that nothing in this section contained shall be construed to confer authority on the orphans court to order the sale for the satisfaction of collateral inheritance tax of any life interest after the expiration of four years from the date of the death of the decedent, who shall have died seised and possessed of the property, or of any remainder or reversionary interest after the expiration of four years from the date at which such interest shall vest in possession. Sections 128, 129, 130 and 132 shall take effect from April 1, 1904, and be retroactive. (2 Pub. Gen. Laws 1904, p. 1839.)

**§ 705. Liability of Executor on Bond.**

Sec. 133. The bond of an executor or administrator shall be liable for all money he may receive under this article for taxes, or for the proceeds of the sales of real estate received by him thereunder. (2 Pub. Gen. Laws 1904, p. 1840.)

**§ 706. Revocation of Executor's Letters for Failure to Perform Duties.**

Sec. 134. If any executor or administrator shall fail to perform any of the duties imposed upon him by this article, the orphans court of the county in which the administration was granted may revoke his administration, and his bond shall be liable, and the same proceedings shall be had against him as if his administration had been revoked for any other cause. (2 Pub. Gen. Laws 1904, p. 1840.)

**§ 707. Powers and Duties of Administrator De Bonis Non.**

Sec. 135. The powers and duties of an administrator de bonis non, or with the will annexed, shall be the same under this article as those of an executor or administrator, and he shall be subject to the same liabilities. (2 Pub. Gen. Laws 1904, p. 1840.)

**§ 708. Proceedings Where No Administration Taken Out.**

Sec. 136. In all cases where any estate, real, personal or mixed, shall be subject to the collateral inheritance tax imposed by this article and

no administration is taken out on the estate of the person who died seized and possessed thereof, within ninety days after the death of said person the orphans court of the county in which such administration should be granted shall issue a summons for the parties entitled to administration to show cause wherefore they do not administer; provided, however, that when any real estate shall be subject to said tax and no administration has been taken on the estate of the person who died seized thereof, the orphans' court of the county where said real estate shall be situate may, on the application of anyone interested in said real estate, appoint appraisers to value the same as provided by the preceding sections of this article, and the amount of said tax may be paid to the register of wills of the county where the said application shall be made. (2 Pub. Gen. Laws 1904, p. 1840.)

**§ 709. Failure of Persons Entitled to Take Out Administration.**

Sec. 137. If the parties entitled by law to administration do not administer within a reasonable time to be fixed by the said court, or if they be incapable, or being capable if they decline or refuse to appear on proper summons or notice, administration shall be granted to such person as the court may deem proper. (2 Pub. Gen. Laws 1904, p. 1841.)

**§ 710. Application for Letters—Inquiry as to Real Estate.**

Sec. 138. In all cases where application is made to the orphans court or register of wills of any county or the city of Baltimore for letters testamentary or of administration, the said court or register shall inquire of the person making application whether he knows or believes that there is any real estate of the decedent liable to the collateral inheritance tax, and the answer of such applicant shall be given on oath if the court or register requires it. (2 Pub. Gen. Laws 1904, p. 1841.)

**§ 711. Receipts for Payment of Tax.**

Sec. 139. The register of wills shall give to the person paying the collateral inheritance tax imposed by this article duplicate receipts for said tax, one of which shall be forwarded by said person to the treasurer to be by him preserved, and copies thereof shall be evidence in suit upon the bond of said register. (2 Pub. Gen. Laws 1904, p. 1841.)

**§ 712. Payment to Treasurer—Commissions of Clerks and Registers of Wills.**

Sec. 140. It shall be the duty of the several clerks and the several registers of wills in this state to account with and pay to the treasurer on the first Monday of March, June, September and December in each and every year all sums of money received by them respectively, for which the clerks shall be allowed a commission of two and one-half per centum, and the register of wills shall be allowed a commission of twelve and one-half per centum upon the amount of said collateral inheritance tax, and the said clerks shall be allowed a commission of five per centum, and the register of wills shall be allowed a commission of twenty-five per cent upon

the amount received of the tax on official commissions and executors' commissions respectively, so paid over. (2 Pub. Gen. Laws 1904, p. 1842; Laws 1908, p. 238.)

**§ 713. Failure of Clerks or Registers to Account.**

Sec. 141. If any of the said clerks or registers shall fail to account and pay over as required in the preceding section, the controller shall, in thirty days thereafter, give notice thereof to the state's attorney for the county or city whose duty it shall be to put the bond of such clerk or register in suit for the use of the state, in which suit a recovery shall be had for the amount appearing to be due, with interest at the rate of ten per cent per annum, from the date or dates when the same was payable as aforesaid, which recovery shall be evidence of misbehavior, and upon conviction thereof the said clerk or register shall be removed from office, which shall thereupon be filled as prescribed by the constitution; and such failure on the part of any clerk or register shall amount to a forfeiture of the commission to which he would otherwise be entitled. (2 Pub. Gen. Laws 1904, p. 1842.)

## CHAPTER XXXVI.

## MASSACHUSETTS STATUTE.

(*Supplement to Revised Laws of 1902-08, pp. 236-248; Acts of 1909, pp. 647-791; Acts of 1910, p. 430; Acts of 1911, pp. 327, 490.*)

- § 714. Transfers Subject to Tax—Rates—Interest—Exemptions.
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- § 745. Proceedings to Determine Taxes on Real Estate.
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§ 714. Transfers Subject to Tax—Rates—Interest—Exemptions.

Sec. 1. All property within the jurisdiction of the commonwealth, corporeal or incorporeal, and any interest therein, whether belonging to inhabitants of the commonwealth or not, which shall pass by will, or by the laws

regulating intestate succession, or by deed, grant, or gift, except in cases of a bona fide purchase for full consideration in money or money's worth, made or intended to take effect in possession or enjoyment after the death of the grantor, to any person, absolutely or in trust, except to or for the use of charitable, educational or religious societies or institutions, the property of which is by the laws of this commonwealth exempt from taxation, or for or upon trust for any charitable purposes, to be carried out within this commonwealth, or to or for the use of a city or town within this commonwealth for public purposes, or to or for the use of (class A) the husband, wife, lineal ancestor, lineal descendant, adopted child, the lineal descendant of any adopted child, the adoptive parent or lineal ancestor of an adoptive parent, the wife or widow of a son, or the husband of a daughter, of a decedent, or to or for the use of (class B) the brother, sister, nephew or niece of a decedent, shall be subject to a tax of five per cent of its value for the use of the commonwealth; and such property which shall so pass to or for the use of a member of class A shall be subject to a tax of one per cent of its value for the use of the commonwealth if such value does not exceed fifty thousand dollars, to a tax of one and one-half per cent if its value exceeds fifty thousand and does not exceed one hundred thousand dollars, and to a tax of two per cent if its value exceeds one hundred thousand dollars; and such property which shall so pass to or for the use of a member of class B shall be subject to a tax of three per cent of its value for the use of the commonwealth if such value does not exceed twenty-five thousand dollars, to a tax of four per cent if its value exceeds twenty-five thousand and does not exceed one hundred thousand dollars, and to a tax of five per cent if its value exceeds one hundred thousand dollars; and administrators, executors and trustees, and any grantees under such conveyance made during the grantor's life, shall be liable for such taxes, with interest, until the same have been paid; but no bequest, devise or distributive share of an estate which shall so pass to or for the use of a husband, wife, father, mother, child, adopted child, adoptive father or adoptive mother of the deceased, unless its value exceeds ten thousand dollars, and no other bequest, devise or distributive share of an estate unless its value exceeds one thousand dollars, shall be subject to the provisions of this act; but no tax shall be exacted upon property so passing which shall reduce its value below the amount of the above exemptions. (Sup. Rev. Laws 1902-08, p. 241; Acts 1909, pp. 647, 791.)

**§ 715. Stock in Corporation Organized Under Laws of More Than One State.**

Sec. 2. When the personal estate so passing from any person not an inhabitant of this commonwealth shall consist in whole or in part of shares in any railroad or street railway company or telegraph or telephone company incorporated under the laws of this commonwealth and also of some other state or country, so much only of each share as is proportional to the part of such company's line lying within this commonwealth shall be considered as property of such person within the jurisdiction of the commonwealth for



the purposes of this part. (Sup. Rev. Laws 1902-08, p. 242; Acts 1909, p. 648.)

**§ 716. Property Subject to Tax Under Laws of Another State.**

Sec. 3. Property of a resident of the commonwealth which is not therein at the time of his death, including so much of each share of stock in any railroad or street railway company or telegraph or telephone company incorporated under the laws of this commonwealth and also under the laws of some other state or country as is proportional to the part of such company's line lying without the commonwealth, shall not be taxable under the provisions of this part if legally subject in another state or country to a tax of like character and amount to that hereby imposed, and if such tax be actually paid or guaranteed or secured in accordance with law in such other state or country; if legally subject in another state or country to a tax of like character but of less amount than that hereby imposed and such tax be actually paid or guaranteed or secured as aforesaid, such property shall be taxable under this part to the extent of the difference between the tax thus actually paid, guaranteed or secured, and the amount for which such property would otherwise be liable hereunder. Property of a nonresident decedent which is within the jurisdiction of the commonwealth at the time of his death, if subject to a tax of like character with that imposed by this part by the law of the state or country of his residence, shall be subject only to such portion of the tax hereby imposed as may be in excess of such tax imposed by the laws of such state or country: provided, that a like exemption is made by the laws of such other state or country in favor of estates of citizens of this commonwealth, but no such exemption shall be allowed until such tax provided for by the law of such other state or country shall be actually paid, guaranteed, or secured in accordance with law. The provisions of this act shall apply to all cases in which the tax remains unpaid at the date of the passage hereof. This act shall take effect upon its passage. (Sup. Rev. Laws 1902-08, p. 242; Acts 1909, pp. 648, 793; Acts 1911, pp. 490, 491, approved May 27, 1911.)

**§ 717. Time for Payment of Tax—Remainders—Liens—Interest.**

Sec. 4. Except as hereinafter provided, taxes imposed by the provisions of this act shall be payable to the treasurer and receiver general by the executors, administrators or trustees at the expiration of two years after the date of their giving bond. If the probate court, acting under the provisions of section thirteen of chapter one hundred and forty-one of the Revised Laws, has ordered the executor or administrator to retain funds to satisfy a claim of a creditor, the payment of the tax may be suspended by the court, to await the disposition of such claim. In all cases where there shall be a grant, devise, descent, or bequest to take effect in possession or come into actual enjoyment after the expiration of one or more life estates or a term of years, the taxes thereon shall be payable by the executors, administrators or trustees in office when such right of possession accrues, or, if no such executor, administrator or trustee, by the person or persons entitled thereto, at the expiration of one year after the date when the

right of possession accrues to the person or persons so entitled. If the taxes are not paid when due, interest shall be charged and collected from the time the same became payable. Property of which a decedent dies seised or possessed, subject to taxes as aforesaid, in whatever form of investment it may happen to be, and all property acquired in substitution therefor, shall be charged with a lien for all taxes and interest thereon which are or may become due on such property; but said lien shall not affect any personal property after the same has been sold or disposed of for value by the executors, administrators or trustees. The lien charged by this act upon any real estate or separate parcel thereof may be discharged by the payment of all taxes due and to become due upon said real estate or separate parcel, or by an order or decree of the probate court discharging said lien and securing the payment to the commonwealth of the tax due or to become due by bond or deposit as hereinafter provided, or by transferring such lien to other real estate owned by the owner or owners of said real estate or separate parcel thereof. (Sup. Rev. Laws 1902-08, p. 242; Acts 1909, pp. 649, 792.)

#### **§ 718. Deposit in Lieu of Payment of Tax.**

Sec. 5. In every case where there shall be a bequest or grant of personal estate made or intended to take effect in possession or enjoyment after the death of the grantor, to take effect in possession or come into actual enjoyment after the expiration of one or more life estates or a term of years, whether conditional upon the happening of a contingency or dependent upon the exercise of a discretion, or subject to a power of appointment or otherwise, the executor or administrator or grantee may deposit with the treasurer and receiver general a sum of money sufficient in the opinion of the tax commissioner to pay all taxes which may become due upon such bequest or grant, and the person or persons having the right to the use or income of such personal estate shall be entitled to receive from the commonwealth interest at the rate of two and one-half per cent per annum upon such deposit, and when said tax shall become due the treasurer and receiver general shall repay to the persons entitled thereto the difference between the tax certified and the amount deposited; or any executor, administrator, trustee or grantee, or any person interested in such bequest or grant may give bond to a judge of the probate court having jurisdiction of the estate of the decedent, in such amount and with such sureties as said court may approve, with the condition that the obligor shall notify the tax commissioner when said tax becomes due and shall then pay the same to the treasurer and receiver general. (Sup. Rev. Laws 1902-08, p. 243; Acts 1909, p. 650.)

#### **§ 719. Assessment upon Actual Value of Property.**

Sec. 6. Except as hereinafter provided, said tax shall be assessed upon the actual value of the property at the time of the death of the decedent. In every case where there shall be a devise, descent, bequest or grant to take effect in possession or enjoyment after the expiration of one or more life estates or a term of years, the tax shall be assessed on the actual value of the property or the interest of the beneficiary therein at the time when

he becomes entitled to the same in possession or enjoyment. The value of an annuity or a life interest in any such property, or any interest therein less than an absolute interest, shall be determined by the "American Experience Tables" at four per cent compound interest. (Sup. Rev. Laws 1902-08, p. 243; Acts 1909, pp. 650, 793.)

**§ 720. Payment of Tax on Future Interests.**

Sec. 7. Any person or persons entitled to a future interest or to future interests in any property may pay the tax on account of the same at any time before such tax would be due in accordance with the provisions hereinbefore contained, and in such cases the tax shall be assessed upon the actual value of the interest at the time of the payment of the tax, and such value shall be determined by the tax commissioner as hereinafter provided. In every case in which it is impossible to compute the present value of any interest the tax commissioner may, with the approval of the attorney general, effect such settlement of the tax as he shall deem to be for the best interests of the commonwealth, and payment of the sum so agreed upon shall be a full satisfaction of such tax. (Sup. Rev. Laws 1902-08, p. 244; Acts 1909, pp. 651, 794.)

**§ 721. Bequests to Executors in Lieu of Compensation.**

Sec. 8. If a testator gives, bequeaths or devises to his executors or trustees any property otherwise liable to said tax, in lieu of their compensation, the value thereof in excess of reasonable compensation, as determined by the probate court upon the application of any interested party or of the tax commissioner, shall nevertheless be subject to the provisions of this part. (Sup. Rev. Laws, 1902-08, p. 244; Acts 1909, p. 651.)

**§ 722. Collection of Tax by Executor—Sale of Land.**

Sec. 9. An executor, administrator or trustee holding property subject to said tax shall deduct the tax therefrom or collect it from the legatee or person entitled to said property; and he shall not deliver property or a specific legacy subject to said tax until he has collected the tax thereon. An executor or administrator shall collect taxes due upon land which is subject to tax under the provisions hereof from the heirs or devisees entitled thereto, and he may be authorized to sell said land, according to the provisions of section twelve, if they refuse or neglect to pay said tax. (Sup. Rev. Laws, 1902-08, p. 244; Acts 1909, p. 651.)

**§ 723. Legacy Charged upon Real Estate.**

Sec. 10. If a legacy subject to said tax is charged upon or payable out of real estate, the heir or devisee, before paying it, shall deduct said tax therefrom and pay it to the executor, administrator or trustee, and the tax shall remain a lien upon said real estate until it is paid. Payment thereof may be enforced by the executor, administrator or trustee in the same manner as the payment of the legacy itself could be enforced. (Sup. Rev. Laws 1902-08, p. 244; Acts 1909, p. 651.)

**§ 724. Testamentary Provision for Payment of Tax.**

Sec. 11. When provision is made by any will or other instrument for payment of the legacy or succession tax upon any gift thereby made out of any property other than that so given, no tax shall be chargeable upon any money to be applied, in payment of such tax. (Sup. Rev. Laws 1902-08, p. 244; Acts 1909, p. 652.)

**§ 725. Sale of Real Estate to Pay Tax.**

Sec. 12. The probate court may authorize executors, administrators and trustees to sell the real estate of a decedent for the payment of said tax in the same manner as it may authorize them to sell real estate for the payment of debts. (Sup. Rev. Laws 1902-08, p. 244; Acts 1909, p. 652.)

**§ 726. Inventory—Penalty for Failure to File.**

Sec. 13. A full and complete inventory and appraisal under oath of every estate shall be filed in the probate court or with the tax commissioner by the executor, administrator or trustee within three months after his appointment, and such inventory shall contain a complete list of all the assets within the knowledge of the said executor, administrator or trustee. If he neglects or refuses to file such an inventory and appraisal he shall be liable to a penalty of not more than one thousand dollars, which shall be recovered by the tax commissioner for the use of the commonwealth, and the register of probate shall notify the tax commissioner within thirty days after the expiration of said three months of the failure of any executor, administrator or trustee to file an inventory and appraisal in his office. (Sup. Rev. Laws 1902-08, p. 244; Acts 1909, pp. 652, 794.)

**§ 727. Copies of Inventory and Other Papers.**

Sec. 14. Within thirty days after the filing of the inventory and appraisal provided for in the preceding section, the register of probate shall send by mail to the tax commissioner a copy thereof. The register shall also, within the same period, send by mail to the tax commissioner a copy of the will of the decedent, if such has been allowed by the probate court. The register shall also furnish such copies of papers in his office as the tax commissioner shall require, and shall furnish information as to the records and files in his office in such form as the tax commissioner may require. A refusal or neglect by the register so to send a copy of such inventory and appraisal, or to furnish such copies or information shall be a breach of his official bond; but the tax commissioner may excuse the register from filing inventories or copies of inventories and of wills of estates no part of which, in his judgment, appears to be subject to a tax under the provisions of this chapter. (Sup. Rev. Laws 1902-08, p. 245; Acts 1909, pp. 652, 795.)

**§ 728. Transfers of Stock by Foreign Executor.**

Sec. 15. If a foreign executor, administrator or trustee assigns or transfers any stock in any national bank located in this commonwealth or in any corporation organized under the laws of this commonwealth, owned by a deceased nonresident at the date of his death and liable to a tax under the pro-

visions of this part, the tax shall be paid to the treasurer and receiver general at the time of such assignment or transfer; and if it is not paid when due, such executor, administrator or trustee shall be personally liable therefor until it is paid. A bank located in this commonwealth or a corporation organized under the laws of this commonwealth which shall record a transfer of any share of its stock made by a foreign executor, administrator or trustee, or issue a new certificate for a share of its stock at the instance of a foreign executor, administrator or trustee, before all taxes imposed thereon by the provisions of this part have been paid, shall be liable for such tax in an action of contract brought by the treasurer and receiver general. (Sup. Rev. Laws 1902-08, p. 249; Acts 1909, p. 653.)

**§ 729. Transfer or Delivery of Securities—Notice to Treasurer and Receiver General.**

Sec. 16. Securities or assets belonging to the estate of a deceased non-resident shall not be delivered or transferred to a foreign executor, administrator or legal representative of said decedent, unless such executor, administrator or legal representative has been licensed to receive such securities or assets under the provisions of section three of chapter one hundred and forty-eight of the Revised Laws, without serving notice upon the tax commissioner of the time and place of such intended delivery or transfer, seven days at least before the time of such delivery or transfer, but the notice required by section three of said chapter one hundred and forty-eight to be given to the treasurer and receiver general shall be given to the tax commissioner in regard to all property subject to the provisions of this part, instead of being given to the treasurer and receiver general. The tax commissioner, either personally or by representative, may examine such securities or assets at the time of such delivery or transfer. Failure to serve such notice or to allow such examination shall render the person or corporation making the delivery or transfer liable, in an action of contract brought by the treasurer and receiver general, to the payment of the tax due upon said securities or assets. (Sup. Rev. Laws 1902-08, p. 246; Acts 1909, p. 653.)

**§ 730. Tax Commissioner to be Party to Petition by Foreign Executor.**

Sec. 17. The tax commissioner shall be made a party to all petitions by foreign executors, administrators or trustees brought under the provisions of section three of chapter one hundred and forty-eight of the Revised Laws, and no decree shall be made upon any such petition unless it appears that notice of such petition has been served on the tax commissioner fourteen days at least before the return of such petition. (Sup. Rev. Laws, 1902-08, p. 246; Acts 1909, p. 654.)

**§ 731. Refunding of Tax Paid.**

Sec. 18. If a person who has paid such tax afterward refunds a portion of the property on which it was paid, or if it is judicially determined that the whole or any part of such tax ought not to have been paid, such tax,

or the due proportion thereof, shall be repaid to him by the executor, administrator or trustee. (Sup. Rev. Laws 1902-08, p. 246; Acts 1909, p. 654.)

**§ 732. Appraisal and Valuation of Property.**

Sec. 19. The value of the property upon which the tax is computed shall be determined by the tax commissioner and notified by him to the person or persons by whom the tax is payable, and such determination shall be final unless the value so determined shall be reduced by proceedings as herein provided. At any time within three months after such determination the probate court shall, upon the application of any party interested in the succession, or of the executor, administrator or trustee, appoint one disinterested appraiser or three disinterested appraisers, who first being sworn, shall appraise such property at its actual market value, as of the day of the death of the decedent and shall make return thereof to said court. Such return, when accepted by said court, shall be final: provided, that any party aggrieved by such appraisal shall have an appeal upon matters of law. One-half of the fees of said appraisers, as determined by the judge of said court, shall be paid by the treasurer and receiver general, and one-half of said fees shall be paid by the other party or parties to said proceeding. (Sup. Rev. Laws 1902-08, p. 246; Acts 1909, p. 654.)

**§ 733. Determination of Amount of Tax by Commissioner.**

Sec. 20. The tax commissioner shall determine the amount of tax due and payable upon any estate or upon any part thereof, and shall certify the amount so due and payable to the treasurer and receiver general and to the person or persons by whom the tax is payable; but in the determination of the amount of any tax said tax commissioner shall not be required to consider any payments on account of debts or expenses of administration which have not been allowed by the probate court having jurisdiction of said estate. Payment of the amount so certified shall be a discharge of the tax. An executor, administrator, trustee or grantee who is aggrieved by any determination of the tax commissioner may, within one year after the payment of any tax to the treasurer and receiver general, apply by a petition in equity to the probate court having jurisdiction of the estate of the decedent for the abatement of said tax or any part thereof, and if the court adjudges that said tax or any part thereof was wrongly exacted it shall order an abatement of such portion of said tax as was assessed without authority of law. Upon a final decision ordering an abatement of any portion of said tax, the treasurer and receiver general shall pay the amount adjudged to have been illegally exacted, with interest, without any further act or resolve making appropriation therefor. (Sup. Rev. Laws, 1902-08, p. 247; Acts 1909, p. 654.)

**§ 734. Jurisdiction of Probate Court—Liability of Executor.**

Sec. 21. The probate court having jurisdiction of the settlement of the estate of the decedent shall, subject to appeal as in other cases, hear and determine all questions relative to said tax, and the treasurer and receiver general shall represent the commonwealth in any such proceedings. If the court shall find that any tax remains due, it shall order the executor, ad-

ministrator or trustee to pay the same, with interest and costs; and execution shall be awarded against the goods and estate of the deceased in the hands of the executor, administrator or trustee, or, if it appears that there are no such goods or estate in his hands, against the goods and estate of the executor, administrator or trustee, as if for his own debt; but the administrators, executors, trustees and grantees hereinbefore mentioned shall be personally liable only for such taxes as shall be payable while they continue in the said offices or have title as such grantees respectively. (Sup. Rev. Laws 1902-08, p. 247; Acts 1909, p. 655.)

**§ 735. Application by Tax Commissioner for Appointment of Administrator.**

Sec. 22. If, upon the decease of a person leaving an estate liable to a tax under the provisions of this part, a will disposing of such estate is not offered for probate, or an application for administration made within four months after such decease, the probate court, upon application by the tax commissioner, shall appoint an administrator, if it then appears that there is no will in existence. (Sup. Rev. Laws 1902-08, p. 247; Acts 1909, p. 655.)

**§ 736. Account of Executor not Allowed Until Tax Paid.**

Sec. 23. No final account of an executor, administrator or trustee shall be allowed by the probate court unless such account shows, and the judge of said court finds, that all taxes imposed by the provisions of this part upon any property or interest therein belonging to the estate to be settled by said account and already payable, have been paid, and that all taxes which may become due on said estate have been paid or settled as hereinbefore provided, or that the payment thereof to the commonwealth is secured by bond or deposit or by lien on real estate. The certificate of the tax commissioner and the receipt of the treasurer and receiver general for the amount of the tax therein certified shall be conclusive as to the payment of the tax, to the extent of said certification. (Sup. Rev. Laws 1902-08, p. 247; Acts 1909, p. 655.)

**§ 737. Proceedings by Treasurer and Receiver General to Recover Tax.**

Sec. 24. The treasurer and receiver general shall commence proceedings for the recovery of any of said taxes within six months after the same become payable; and also whenever the judge or a probate court certifies to him that the final account of an executor, administrator or trustee has been filed in such court, and that the settlement of the estate is delayed because of the nonpayment of said tax. The probate court shall so certify upon the application of any heir, legatee or other person interested therein, and may extend the time of payment of said tax whenever the circumstances of the case require. (Sup. Rev. Laws 1902-08, p. 247; Acts 1909, p. 655.)

**§ 738. Retrospective Operation of Statute.**

Sec. 25. This part shall not apply to estates of persons deceased prior to the date when chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven took effect, nor to property passing by deed,

grant, sale or gift made prior to said date; but said estates and property shall remain subject to the provisions of law in force prior to the passage of said chapter. (Sup. Rev. Laws 1902-08, p. 248; Acts 1909, p. 656.)

**§ 739. Construction of Statute With Reference to Other Laws.**

Sec. 26. The provisions of this act, so far as they are the same as those of existing statutes, shall be construed as continuations thereof, and not as new enactments, and a reference in a statute which has not been repealed to provisions of law which have been revised and re-enacted herein shall be construed as applying to such provisions as so incorporated in this act; they shall not affect any act done, liability incurred, or any right accrued and established, or any suit or prosecution, civil or criminal, pending or to be instituted, to enforce any right or penalty or punish any offense under the authority of existing laws, but the proceedings in such cases shall conform to the provisions of this act. (Sup. Rev. Laws 1902-08, p. 248; Acts 1909, p. 656.)

**§ 740. Repeal of Other Legislation.**

Sec. 27. Nothing in this act contained shall be construed as repealing or in any way affecting any other legislation passed in the year nineteen hundred and nine. (Acts 1909, p. 657.)

**§ 741. Powers of Appointment.**

Sec. 28. Whenever any person shall exercise a power of appointment derived from any disposition of property made prior to September first, nineteen hundred and seven, such appointment when made shall be deemed to be a disposition of property by the person exercising such power, taxable under the provisions of chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven, and of all acts in amendment thereof and in addition thereto, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by the donee by will; and whenever any person possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a disposition of property taxable under the provisions of chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven and all acts in amendment thereof and in addition thereto shall be deemed to take place to the extent of such omission or failure in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure. The provisions of chapter fifteen of the Revised Laws, chapter four hundred and seventy-three of the acts of the year nineteen hundred and two, chapters two hundred and forty-eight, two hundred and fifty-one and two hundred and seventy-six of the acts of the year nineteen hundred and three, chapter four hundred and twenty-one of acts of the year nineteen hundred and four, chapters three hundred and sixty-seven



and four hundred and seventy of the acts of the year nineteen hundred and five and chapter four hundred and thirty-six of the acts of nineteen hundred and six are hereby repealed in so far as they apply to the taxation of property passing through or by reason of powers of appointment created in dispositions of property made subsequent to June eleventh, eighteen hundred and ninety-one and prior to September first, nineteen hundred and seven, which have not been fully exercised prior to the passage of this act or the taxes thereon settled under the provisions of chapter four hundred and twenty-one of the acts of the year nineteen hundred and four. The provisions of section twenty-five of chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven are hereby repealed in so far as the same are inconsistent with the provisions of this act. (Acts 1909, p. 796.)

**§ 742. Refusal to Furnish Tax Commissioner With Information.**

Sec. 29. Whenever an executor, administrator, trustee, or any person who is liable to taxation under the provisions of chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven and all acts in amendment thereof and in addition thereto, refuses or neglects to furnish the tax commissioner with any information which in the opinion of the tax commissioner is necessary to the proper computation of the taxes payable by such executor, administrator, trustee or person, after having been requested so to do, the tax commissioner shall certify such taxes at the highest rate at which they could in any event be computed. (Acts 1909, p. 798.)

**§ 743. Application of Provisions of This Act to Unpaid Taxes.**

Sec. 30. The provisions of sections two (section four herein) and four (section seven herein) of this act shall apply to all cases in which the tax remains unpaid at the date of the passage hereof. (Acts 1909, p. 798.)

**§ 744. Application of Act to Administrators Appointed Prior to Passage.**

Sec. 31. The provisions of section five (section thirteen herein) of this act shall not apply to executors, administrators or trustees appointed prior to the passage hereof, but such executors, administrators or trustees shall remain subject to the provisions of said section thirteen prior to its amendment. (Acts 1909, p. 798.)

**§ 745. Proceedings to Determine Taxes on Real Estate.**

Sec. 32. Upon the petition of the treasurer and receiver general the probate court shall, after such notice to the owners of any real estate or separate parcel thereof as said court shall order, determine the amount of taxes imposed by chapter four hundred and twenty-five of the acts of the year eighteen hundred and ninety-one and acts in amendment thereof and in addition thereto, and by chapter fifteen of the Revised Laws and acts in amendment thereof and in addition thereto, and by chapter five hundred and sixty-three of the acts of the year nineteen hundred and seven and acts in amendment thereof and in addition thereto, which have become

payable, and of interest on the said taxes, for which such real estate or separate parcel thereof is charged with a lien. After such determination the treasurer and receiver general may collect the said taxes and interest by sale in the manner provided by part II of chapter four hundred and ninety of the acts of the year nineteen hundred and nine for the collection of taxes by sale by a collector of taxes, so far as the provisions of the said statute are applicable. (Acts 1910, p. 379, approved April 25, 1910.)

**§ 746. Right to Inspect Papers and Records, and Use Them in Legal Proceedings.**

Sec. 33. Papers, copies of papers, affidavits, statements, letters and other information and evidence filed with the tax commissioner in connection with the assessment of taxes upon legacies and successions, except inventories filed with the tax commissioner under the provisions of section thirteen of part IV of chapter four hundred and ninety of the act of the year nineteen hundred and nine, as amended by section five of chapter five hundred and twenty-seven of the acts of the year nineteen hundred and nine, shall be open only to the inspection of persons charged or likely to become charged with the payment of taxes in the case in which such paper, copy, affidavit, statement, letter or other information or evidence is filed, or their representatives, and to the tax commissioner, his deputy, assistants and clerks, and such other officers of the commonwealth and other persons as may, in the performance of their duties, have occasion to inspect the same for the purpose of assessing or collecting taxes. Nothing in this act shall be construed as limiting the duties imposed upon the supervisors of assessors by section six of part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine, or as prohibiting the use of such papers, copies, affidavits, statements, letters and other information and evidence in legal proceedings involving the assessment, collection or abatement of taxes. (Acts 1911, p. 327, approved April 29, 1911.)

## CHAPTER XXXVII.

## MICHIGAN STATUTE.

(*Public Acts of 1899, p. 285; Public Acts of 1903, p. 277; Public Acts of 1907, p. 199; Public Acts of 1909, pp. 71, 700; Public Acts of 1911, p. 101.*)

- § 747. Transfers Subject to Tax—Rates.
- § 748. Transfers Exempt from Taxation.
- § 749. Proceedings to Enforce Tax—Foreclosure of Lien—Redemption.
- § 750. Interest and Discount.
- § 751. Collection of Tax by Executor—Sale or Mortgage of Property.
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- § 753. Payment of Tax in Case of Reversions or Remainders.
- § 754. Bequests to Executor in Lieu of Commissions.
- § 755. Transfer or Delivery of Stock, Deposits or Securities—Notice.
- § 756. Jurisdiction of Probate Court—Petition for Letters.
- § 757. Appointment of Appraisers—Valuation of Property.
- § 758. Notice of Appraisement—Proceedings and Expenses.
- § 759. Report of Appraiser—Assessment of Tax.
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- § 761. Receipts—Transfer Tax-book.
- § 762. Fees of County Treasurer.
- § 763. Record to be Kept by Probate Judge.
- § 764. Copies of Letters and Forms—Report of Register of Deeds—Property of Nonresident.
- § 765. Report of County Treasurer—Examiners of Records.
- § 766. Payment to State Treasurer—Application of Funds.
- § 767. Definitions of Terms.
- § 768. Time When Statute Takes Effect.
- § 747. Transfers Subject to Tax—Rates.

(Sec. 1.) That after the passage of this act a tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of one hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations not exempt by law from taxation on real or personal property, in the following cases:

When the transfer is by will or by the intestate laws of this state from any person dying seised or possessed of the property while a resident of this state;

When the transfer is by will or intestate law of property within the state, and the decedent was a nonresident of the state at the time of his death;

When the transfer is of property made by a resident or by nonresident, when such nonresident's property is within this state, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor or intended to take effect, in possession or enjoyment at or after such death. Such tax shall also be imposed when any such person or corporation becomes

beneficially entitled in possession or expectancy to any property or the income thereof by any such transfer, whether made before or after the passage of this act. Such tax shall be at the rate of five per cent upon the clear market value of such property, except as otherwise prescribed in the next section. (Pub. Acts 1899, p. 285; Pub. Acts 1903, p. 277.)

**§ 748. Transfers Exempt from Taxation.**

(Sec. 2.) When the property or any beneficial interest therein passes by any such transfer to or for the use of one or more of the following named persons: Father, mother, husband, wife, child, brother, sister, wife or widow of a son, or the husband of a daughter, or to or for the use of any child or children adopted as such in conformity with the laws of this state of the decedent, grantor, donor, or vendor or to or for the use of any persons to whom any such decedent, grantor, donor, or vendor, for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, or to or for the use of any lineal descendant of such decedent, grantor, donor or vendor, such transfer of property shall not be taxable under this act, unless it is personal property of the clear market value of two thousand dollars or over, in which case the entire transfer shall be taxed under this act at the rate of one per cent upon the clear market value thereof. The exemptions of sections one and two of this act shall apply and be granted to each beneficiary's interest therein, and not to the entire estate of a decedent. (Pub. Acts 1899, p. 285; Pub. Acts 1903, p. 278.)

**§ 749. Proceedings to Enforce Tax—Foreclosure of Lien—Redemption.**

(Sec. 3.) Every such tax and the interest thereon herein provided for shall be and remain a lien upon the property transferred until paid, and the person to whom the property is so transferred and the administrator, executor, and trustee of every estate so transferred, shall be personally liable for such tax until its payment; except that the executor or administrator shall not be personally liable for the tax upon a reversion or remainder consisting of real estate where the election provided for in section seven is made. The tax shall be paid to the treasurer of the county in which the probate court has jurisdiction as herein provided, and said treasurer shall make out, upon forms prescribed by the auditor general, receipts in duplicate, and immediately send the same to the auditor general, and accompany them with the amount received in funds by law receivable at the state treasury. It shall then be the duty of the auditor general to charge the treasurer so receiving the tax with the amount thereof and credit him with the payment of same to state treasurer, and in case the determination of said tax and said receipt are believed to be in accordance with law, seal said receipts with the seal of his office and countersign the same and return one of them to the county treasurer who shall file and preserve it in his office and immediately send the other of such receipts to the judge of probate who shall file and preserve it in his office, whereupon it shall be a voucher in settlement of the accounts of the executor, administrator, or trustee of the estate upon which the tax is paid. At the same time the auditor general shall send to the county treasurer the state treasurer's receipt, countersigned as required by law, showing payment of tax. The seal-

ing and countersigning of said receipts shall not prejudice the right of the state to a review of the determination fixing the tax. The receipts issued under this section shall show whether the amount paid is a payment of the tax upon any beneficial interest or upon the entire transfer. But no executor, administrator or trustee of an estate, in settlement of which a tax is due under the provisions of this act, shall be discharged and the estate or trust closed by a decree of the court, unless there shall be produced a receipt signed by the county treasurer and sealed and countersigned by the auditor general, or a copy thereof, certified by the county treasurer, or unless payment of the tax has been deferred as prescribed by section seven of this act. When any such tax shall be paid to the county treasurer, he shall, in addition to the duplicate receipts required to be issued upon the form prescribed by the auditor general, give the executor, administrator, trustee, or other person paying the tax, a simple receipt for the amount received. All taxes imposed by this act shall accrue and be due and payable at the time of transfer, which is the date of death; provided, however, that taxes upon the transfer of any estate, property or interest therein limited, conditioned, dependent or determinable upon the happening of any contingency or future event, by reason of which the clear market value thereof cannot be ascertained at the time of the transfer as herein provided, shall accrue and become due and payable when the persons or corporations beneficially entitled thereto shall come into actual possession or enjoyment thereof.

All proceedings to enforce any lien now existing, or which may hereafter accrue, against any property under this act, shall be instituted by information, in the name of the people of the state of Michigan, addressed to the circuit court in chancery of the county in which such property is situated. It shall be signed by the attorney general and need not be otherwise verified, and shall be equivalent to a bill in chancery to enforce the lien against such property. And in such proceedings, all persons owning such property or any interest therein as shown by the record in the office of the register of deeds, or by the records of the probate court, at the time of the commencement of the proceedings, shall be made parties to such action, and all other persons having any rights or interest in said property, may make themselves parties thereto, on motion to the court, and notice to complainant, and may file their intervening or cross-bills, or answers claiming the benefit of cross-bills, and notices of lis pendens therein. Intervening or cross-bills shall be made on oath.

Such information shall show the name of the deceased, date of his death, the place of residence at the time of death, the county in which his estate was probated, the description of the property transferred, whether by will or under the intestate laws, and against which the lien exists, the name of the person or persons to whom it was transferred, the amount of taxes determined by the probate court upon the transfer, the date of the determination and whether the property is owned by the person or persons to whom it was transferred by will or under the intestate laws or by a subsequent purchaser, naming him. Such information shall also show that the taxes determined upon the transfer of such property have not been paid and the amount of interest due thereon upon the date of the filing of the information. In those cases in which the

property upon which the lien exists is owned by the person or persons to whom it was transferred by will or under the intestate laws, the prayer for relief shall be that the court determine the amount due; that the defendant pay to the county treasurer of the county, in which the estate was probated, for and in behalf of the state of Michigan, whatever sum shall appear to be due, together with the costs of the proceeding, and that in default of such payment the property upon which the lien exists, may be sold in the manner herein provided, to satisfy such taxes, interest and cost. In those cases in which the property upon which the lien exists is owned by a subsequent purchaser, the prayer for relief shall be that the court determine the amount due and that the property upon which the lien exists may be sold in the manner herein provided to satisfy such taxes, interest and costs of the proceeding. Such information may contain such other and further allegations and prayers as are deemed material and permitted by the rules and practice of the court.

A certified copy of the order of determination of the inheritance tax, for which the lien exists, certified by either the judge or register of probate of the court that determined the tax or by the auditor general, may be attached to such information, and when so attached shall be considered a part thereof and shall be prima facie evidence of the determination of the inheritance tax and the accruing of the lien against such property. Also a certificate of the auditor general stating that the inheritance tax, or any part thereof determined upon the transfer of such property upon which the lien exists, has not been paid, may be attached to such information and when so attached shall be considered a part thereof and shall be prima facie evidence of the nonpayment of such an amount of the tax and interest as shown to be unpaid by such certificate.

All provisions of law now existing relative to the service of process in chancery cases, and all provisions of law now existing relative to all matters of procedure and practice in chancery cases, not otherwise herein specifically provided for, shall govern in so far as they are applicable in all proceedings instituted under this act.

If any infant, insane, or otherwise mentally incompetent person has any interest in the property upon which the lien exists, service of process shall be made upon such a person in the same manner and with the same effect as upon persons not under any disability, whether such infant, insane, or otherwise mentally incompetent person is within or without the jurisdiction.

After the issuing and service of process against the infant, insane, or otherwise incompetent person, a guardian ad litem may be appointed for such infant, insane, or otherwise incompetent person by the court upon motion of the attorney general, or such guardian ad litem may be appointed by the court upon the request of such infant, and in case of an insane or otherwise incompetent person, at the request of such person's general guardian.

If upon the hearing of said cause it shall appear that the inheritance taxes and interest, or either, upon the transfer of the property upon which the lien exists have not been paid, the court shall decree the amount of taxes and interest thereon found to be due, together with such costs as are now allowed by law in chancery cases as the court shall award, to be paid by the person or persons owning the property, or any interest therein, within three months

after the entry of said decree and that in default of such payment that the property upon which the lien exists, be sold to satisfy such taxes, interest and costs. If it shall appear that the person or persons to whom was transferred the property by will or under the intestate laws, have parted with their interest therein before the institution of the proceedings herein provided for, and that such property is owned by a subsequent purchaser, the court shall decree that such property be sold to satisfy such taxes, interest and costs, unless the owner thereof satisfies such taxes, interest and costs within three months from the entry of such decree; provided, that in those cases in which it shall appear that two or more pieces or parcels of land were transferred by will or under the intestate laws, to one person, and that such person has, prior to the institution of the proceedings herein provided for, parted with either or all of said pieces or parcels of land and that the court can ascertain from the order of determination, the amount of inheritance tax, determined upon the transfer of each piece or parcel and that the lien against all of said pieces or parcels is being foreclosed in one proceeding, the court may decree the sale of said piece or parcel, to satisfy the amount of tax determined upon the transfer of said piece or parcel, together with the interest thereon and the pro rata costs of the proceeding; provided, that in no case shall any such property be sold to satisfy such taxes, interest and costs within three months after the entry of such decree; provided further, that if the person or persons owning such property or any interest therein, his heirs, executors, administrators, or any person lawfully claiming from or under him or them, shall within six months from the time of such sale redeem the entire premises sold, by paying to the register of deeds in whose office the deed is deposited, as provided by the eleventh subdivision of this section, for the benefit of such purchaser, his executors, administrators, or assigns, the sum which was bid therefor at the time of sale, with interest, at the rate of six per cent together with the sum of one dollar as a fee for the care and custody of such redemption money, and the fee paid by the purchaser for recording his deed, then said deed shall be void and of no effect, but in case any distinct lot or parcel separately sold shall be redeemed leaving a portion of the premises unredeemed, then such deed shall be inoperative merely to the parcel or parcels so redeemed and to those portions not so redeemed shall remain valid and of full effect.

If it shall appear to the court after the expiration of three months from the date of entry of the decree from a certificate of the county treasurer to whom the taxes, interest and costs were to be paid, attached to a petition of the attorney general for an order of sale of such property, that the same have not been paid, he shall enter an order directing the circuit court commissioner, or some other person duly authorized by the order of the court, to sell such property. Such sales shall be at public vendue between the hours of nine o'clock in the morning and six o'clock in the evening at the courthouse or at such other place as the court shall direct, within sixty days from the date of the order and on the date therein specified: Provided, that the court may, if necessary, by further order adjourn the sale from time to time: Provided further, that the circuit court commissioner, or other person authorized to make such sale, may, if bids are not received equal to the amount of taxes,

interest and costs, adjourn the sale from time to time. But in no case shall such sale be adjourned for more than sixty days at any one time.

Upon receipt of a certified copy of the order of sale the circuit court commissioner, or other person duly authorized by the order of the court, to conduct such sale, shall publish the same in some newspaper printed in the county or such other paper as the court may direct, once in each week, for three weeks in succession: Provided, that if the sale is adjourned by order of the court, or by the circuit court commissioner, or other person duly authorized by the order of the court, to conduct such sale the same publication shall be had of the order or notice adjourning the sale as is herein provided for publishing the order of sale: Provided further, that proof of such publication shall be filed with the register in chancery before the sale.

The circuit court commissioner, or other person authorized to make such sale shall make and file a report of the same. Such report shall be entitled in the court and cause and shall be certified and filed with the register in chancery.

Deeds shall thereupon be executed by such circuit court commissioner, or other person, making such sale, specifying the names of the parties in the suit, the date of the determination of the inheritance tax; the name of the deceased, the county in which the estate was probated, with a description of the premises and the amount for which each parcel of land therein described was sold, and he shall indorse upon each deed when the same shall become operative, in case the premises are not redeemed according to law. Such deed or deeds shall, as soon as practicable and within twenty days after such sale, be deposited with the register of deeds of the county in which the land therein described is situated, and the register shall endorse thereon the time the same was received and for a better preservation thereof, shall record the same at length in a book to be provided for in his office for that purpose, and shall index the same in the regular index of deeds, and the fees for recording same shall be paid by the purchaser and be included among the other costs and expenses. In case such premises or any parcel thereof shall be redeemed the register of deeds shall write on the face of such record the word "Redeemed," stating at what date such entry is made and signing such entry with his official signature. Unless the premises described in such deed, or any parcel thereof, shall be redeemed within the time limited for such redemption, as herein provided, such deed shall thereupon as to all parcels not so redeemed, become operative and shall vest in the grantee therein named, his heirs or assigns all the right, title and interest therein which the person or persons received therein either from the deceased by reason of the transfer to them by will or under the intestate laws, or as subsequent purchasers.

The proceeds of every sale herein provided for shall be paid to the treasurer of the county wherein the estate was probated, to be applied to the discharge of the tax, interest and costs, and if there be any surplus, it shall be brought into court for the use of the defendant, or the person entitled thereto, subject to the order of the court. The redemption money paid to the register of deeds, shall be paid to the persons entitled thereto as soon as practicable, and in those cases in which the state was the purchaser, the money shall be paid to the treasurer of the county wherein the estate was probated, and if there be any surplus after the tax, interest and costs are satisfied, the same shall be brought



into court for the use of the defendant or the person entitled thereto, subject to the order of the court.

Upon the filing of the information, two dollars as fees shall be paid to the register in chancery, which shall be in full of all register fees and charges in such proceedings, on his behalf. The circuit court commissioner, or other person authorized by the court to make the sale, shall be entitled to the following fees and no others: For attending sale and adjourning same, one dollar; for attending sale and making same, one dollar and fifty cents; mileage, one way, ten cents per mile; executing deed or deeds on real estate sales, twenty-five cents for each deed necessarily executed; making report of sale and filing same, one dollar. The cost of publishing any legal notices herein required to be published shall be at the rate of seventy cents per folio for the first insertion, and thirty-five cents per folio for each subsequent insertion. The fees which are provided for in this act, shall be added by the circuit court commissioner, or other person duly authorized to make the sale, to the tax, interest and costs awarded by the court as charges against the land. (Pub. Acts 1899, p. 285; Pub. Acts 1903, p. 278; Pub. Acts 1907, p. 199.)

#### § 750. Interest and Discount.

(Sec. 4.) If in any case, whether such transfer shall take effect prior or subsequent to the taking effect of this act, such a tax is paid within twelve months from the accruing thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accruing thereof, interest shall be charged and collected thereon at the rate of eight per cent per annum from the time the tax accrued, unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax cannot be determined and paid as herein provided, in which case interest at the rate of six per cent per annum shall be charged upon such tax from and after the expiration of said eighteen months until the tax is determined, or could be determined, and after the determination, or after the time it could be determined, interest at eight per cent per annum shall be charged until the date of the payment thereof. In all cases where payment is deferred as provided in section seven of this act, interest shall be charged at the rate of five per centum per annum from the accrual of the tax until the date of the payment thereof. (Pub. Acts 1899, p. 286; Pub. Acts 1903, p. 279; Pub. Acts 1907, p. 206.)

#### § 751. Collection of Tax by Executor—Sale or Mortgage of Property.

(Sec. 5.) Every executor, administrator, trustee or other person shall have full power to sell or mortgage so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of a decedent or ward; except that in cases where the transfer is to two or more persons in common, and one or more of them shall have paid his proportion of such tax, such executor, administrator, trustee, or other person shall sell or mortgage only the interest of such of the persons to whom the property was transferred as have not paid the tax, to pay the tax due upon such share or shares. Any such administrator, executor, trustee or other person having in charge or in trust any legacy or property

for distribution subject to such tax, shall deduct the tax therefrom; and within thirty days thereafter shall pay over the same to the county treasurer as herein provided. If such legacy or property be not in money, he shall collect the tax thereon as determined by the judge of probate from the person entitled thereto, unless such tax has been paid to the county treasurer. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this act to any person until the tax assessed thereon has been paid to him or to the county treasurer. If any such legacy shall be charged upon or payable out of real property and is taxable under this act, the devisee charged with the payment of such legacy shall deduct such tax therefrom and pay it to the county treasurer or the administrator, executor or trustee. And the payment thereof shall be enforced by the executor, administrator or trustee, in the same manner as payment of the legacy might be enforced, or by the attorney general or prosecuting attorney by the appropriate legal proceeding. If such legacy shall be given in money to any such person for a limited period, the administrator, executor, trustee or other person shall retain the tax upon the whole amount, but if not in money, he shall make such application to the court having jurisdiction of an accounting by him, to make an apportionment, if the case require it, of the sum to be paid by such legatee and for such further order relative thereto as the case may require. (Pub. Acts 1899, p. 287; Pub. Acts 1903, p. 280.)

#### § 752. Refund of Tax Erroneously Paid.

(Sec. 6.) If any debt shall be allowed against the estate of a decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall, upon the order of the court, be paid to him by the executor, administrator, trustee or other person, if the tax has not been paid to the county treasurer. When any amount of said tax shall have been paid erroneously into the county treasury by reason of the allowance of debts or otherwise, it shall be lawful for the auditor general, upon satisfactory proof by the order or certificate of the proper court of the allowance of such debts or of the reversal, correction or alteration, in accordance with law, of the order fixing such tax, to draw his warrant upon the state treasury for such erroneous payment, to be refunded to the executor, administrator, trustee, person or persons entitled to receive it, and charge the same to the fund which receives credit from the payment of taxes under the provisions of this act; provided, however, that all applications for such refunding of erroneous tax shall be made within six months from the allowance of such debts or the reversal, correction or alteration of said order. (Pub. Acts 1899, p. 287; Pub. Acts 1903, p. 280.)

#### § 753. Payment of Tax in Case of Reversions or Remainders.

(Sec. 7.) Any person or corporation beneficially interested in the reversion or remainder of any property chargeable with a tax under this act, and executors, administrators and trustees thereof, may elect within one year from the transfer thereof as herein provided, not to pay such tax until the person or

persons beneficially interested therein shall come into the actual possession or enjoyment thereof. If it be personal property, the person or persons so electing shall give a bond to the state in the penalty of three times the amount of such tax, with such sureties as the judge of probate of the proper county may approve, conditioned for the payment of such tax and interest thereon at such time and period as the person or persons beneficially interested therein may come into the actual possession or enjoyment of such property, which bond shall be executed and filed and a full return of such property upon oath made to the probate court within one year from the date of the transfer thereof, as herein provided, and such bond must be renewed every five years: Provided, that the time fixed herein for making such election may be extended by the court in its discretion for a period not to exceed two years. (Pub. Acts 1899, p. 288; Pub. Acts 1903, p. 281.)

**§ 754. Requests to Executor in Lieu of Commissions.**

(Sec. 8.) If a testator bequeath or devise his property to one or more executors or trustees in lieu of their commissions or allowances, to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed or devised above the amount of commissions or allowances prescribed by law shall be taxable under this act. (Pub. Acts 1899, p. 288; Pub. Acts 1903, p. 281.)

**§ 755. Transfer or Delivery of Stock, Deposits or Securities—Notice.**

(Sec. 9.) If a foreign executor, administrator or trustee shall assign or convey any stock or obligation in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof; and any corporation, person or persons having control over any such assets, shall not deliver or transfer the same to any person or corporation other than an executor, administrator, trustee or guardian duly qualified under the laws of this state, until the tax to which the same is liable has been paid as provided in this act. No safe deposit company, trust company, bank or other institution, person or persons holding securities or assets of a decedent shall deliver or transfer the same to the executors, administrators, or legal representatives of said decedent or their assignees unless notice of the time and place of such intended delivery or transfer be served upon the county treasurer by said company, bank, institution, person or persons, at least five days prior to the said delivery or transfer. And it shall be lawful for the said county treasurer and is hereby made his duty personally or by representative, to examine said securities or assets at the time of or prior to such delivery or transfer. Failure to serve such notice or to allow such examination on the delivery or transfer herein prohibited, shall render such safe deposit company, bank, or other institution, person or persons liable to the payment of the tax due or to become due upon said securities or assets in pursuance of the provisions of this act. (Pub. Acts 1899, p. 288; Pub. Acts 1903, p. 281.)

**§ 756. Jurisdiction of Probate Court—Petition for Letters.**

(Sec. 10.) The probate court of every county of this state having jurisdiction to grant letters testamentary or of administration upon the estate of

a decedent whose property is chargeable with any tax under this act, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this act and to do any act in relation thereto authorized by law to be done by a judge of probate in other matters or proceedings coming within his jurisdiction, and if two or more probate courts shall be entitled to exercise any such jurisdiction, the judge of probate first acquiring jurisdiction hereunder shall retain the same, to the exclusion of every other judge of probate. Every petition for ancillary letters testamentary or ancillary letters of administration shall set forth a true and correct statement of all the decedent's property in this state and the value thereof. (Pub. Acts 1899, p. 289; Pub. Acts 1903, p. 281.)

**§ 757. Appointment of Appraisers—Valuation of Property.**

(Sec. 11.) The judge of probate, upon the application of any interested party, including the auditor general and county treasurers, or upon his own motion shall, as often as and whenever occasion may require, appoint a competent person as appraiser to fix the clear market value at the time of the transfer thereof of property which shall be subject to the payment of any tax imposed by this act, a description of which property and the names and residences of the persons to whom it passes shall be given by the judge of probate to such appraiser. If the property, upon the transfer of which the tax is imposed, shall be an estate, income or interest for a term of years or for life, or determinable upon any future or contingent estate, or shall be a remainder or reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or of which it is a part, shall be appraised immediately after such transfer, or as soon thereafter as may be practicable, at the clear market value thereof as of that date; provided, however, that when such estate, income or interest shall be of such a nature that its clear market value cannot be ascertained at such time, it shall be appraised in like manner at the time when such value first became ascertainable. The value of every future or contingent or limited estate, income, interest or annuity, dependent upon any life or lives in being, shall be determined by the rule, method or standard of mortality and value employed by the commissioner of insurance in ascertaining the value of policies of life insurance companies, except that the rate of interest for computing the present value of all future and contingent interests or estates shall be five per centum per annum. The commissioner of insurance shall, upon request of the auditor general, prepare such tables of values, expectancies and other matters as may be necessary for use in computing, under the provisions of this act, the value of life estates, annuities, reversions and remainders, which shall be printed and furnished by the auditor general to the several judges of probate upon request; provided further, that the clear market value of the transfer of a money legacy, presently taxable, shall for the purpose of this act be taken to be the face value of the money at the date of death of decedent. (Pub. Acts 1899, p. 289; Pub. Acts 1903, p. 282; Pub. Acts 1907, p. 206.)

**§ 758. Notice of Appraisement—Proceedings and Expenses.**

(Sec. 12.) Every such appraiser shall forthwith give notice by mail to all such persons as he is notified by the judge of probate are interested in the property to be appraised, and to the county treasurer, of the time and place when he will appraise the property. He shall at such time and place appraise the same at its clear market value as herein prescribed, and for that purpose said appraiser is authorized to issue subpoenas to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make report thereof of any of such value in writing to said judge of probate, together with the depositions of the witnesses examined and such other facts in relation thereto and to the said matter as the said judge of probate may order and require. Every appraiser shall be reimbursed for his actual and necessary traveling and other expenses and shall be entitled to three dollars per day for every day actually and necessarily employed in such appraisement. The fees of the necessary witnesses shall be the same as those now paid to witnesses subpoenaed to attend a court of record. A statement in detail of such compensation and disbursements as are authorized by this section shall be approved by the judge of probate and paid by the county treasurer from the general or contingent fund of the county. (Pub. Acts 1899, p. 290; Pub. Acts 1903, p. 283.)

**§ 759. Report of Appraiser—Assessment of Tax.**

(Sec. 13.) The report of the appraiser shall be filed in the office of the judge of probate, and from such report and other proof relating to any such estate before the judge of probate, the judge of probate shall forthwith, as of course, determine the clear market value of all such estates as of the date of transfer, and the amount of tax to which the same is liable, or the judge of probate may so determine the clear market value of all such estates and the amount of tax to which the same are liable, without appointing an appraiser. The judge of probate may, and shall on application of the attorney general or auditor general, require the executor, administrator, or trustee of any estate to file with him an itemized statement or petition containing itemized statement, under oath, of the personal property and real property within his knowledge or possession or under his control as such executor, administrator or trustee, which statement shall indicate the date from which interest and dividends were due and unpaid upon each item of the personal estate, together with the rate of such interest and also of the amount and character of any encumbrances upon such real estate at the time of the death of said deceased, and other data, such as debts, expenses of administration and other charges which constitute proper deductions in reaching a taxable remainder under the provisions of this act. The judge of probate before determination of the tax upon the estate of a decedent as a whole is made, may determine the tax upon any specific legacy or devise, or upon the real estate of a decedent, and may authorize and direct any executor or administrator to pay to the county treasurer a sum in gross on account of the inheritance tax due from the estate when by reason of claims made against the estate litigation or

other unavoidable cause of delay the tax cannot be determined by the court within eighteen months from its accrual, but the five per centum discount provided in section four of this act shall not be allowed upon this gross sum. The judge of probate in the order determining the tax upon such estate shall state the amount authorized to be paid in gross as above provided and the date of such order. The commissioner of insurance shall, on the application of any judge of probate, or the auditor general, determine the value of any such future or contingent estate, income or interest limited, contingent, dependent, or determinable, upon the life or lives of persons in being, upon the facts contained in any such appraiser's report, or facts stated by the judge of probate, and certify the same to the auditor general or the judge of probate, and his certificate shall be prima facie evidence that the method of computation adopted therein is correct. In case the state shall appeal from the appraisement, assessment, or determination of the tax, it shall not be necessary to give any bond. The judge of probate shall immediately give notice upon the determination by him of the value of any estate which is taxable under this act, and of the tax to which the same is liable, to each heir, legatee or devisee or his attorney and of the tax assessed upon his share of the estate, by mailing such notice, postage prepaid, to the last known address of each of such persons, or his attorney, except those who were in court in person or by attorney at the time the tax was so determined; provided, that the judge of probate shall, upon the written application of any person interested, including the attorney general, file with him within sixty days after the determination by him of any tax under this act, grant a rehearing upon the matter of determining such tax; and if, on such rehearing, he shall modify his former determination he shall enter an order redetermining the tax, and make the necessary entries in the book provided for in section seventeen of this act, and make report thereof to the auditor general and county treasurer, as provided in section eighteen of this act. (Pub. Acts 1899, p. 291; Pub. Acts 1903, p. 283.)

**§ 760. Notice to Attorney General of Delinquencies—Proceedings to Collect Tax.**

(Sec. 14.) If the auditor general or the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the persons liable therefor to pay the same, he shall notify the attorney general in writing of such failure or neglect, and such attorney general may apply, or cause the prosecuting attorney of the county to apply, in behalf of the state, to the probate court for a citation citing the persons liable to pay such tax to appear before the court on a day specified, not more than three months after the date of such citation, and show cause why the tax should not be paid. The judge of probate upon such application, and whenever it shall appear to him that any such tax accruing under this act has not been paid as required by law, shall issue such citation, and the service of such citation, and the time, manner and proof thereof and the hearing and determination thereon, and the enforcement of the determination or order made by the judge of probate

shall conform to the practice of the probate court in like cases made and provided for the service of citations out of the probate court, and the hearing and determination thereon and its enforcement, so far as the same may be applicable. In all cases where an estate has been declared closed without fixing or payment of the tax upon the transfers therein, and the attorney general shall believe such transfers to be subject to a tax and real estate in said estate to be subject to a lien thereof and shall contemplate the institution of proceedings for the fixing and enforcing, or the enforcing of the same when it has been fixed, he may in his discretion file with the register of deeds of the county a notice setting forth such fact, together with a description of the real estate claimed to be subject to the same which shall operate with the same force and effect as a *lis pendens* under existing statutes; provided, that the failure to file such notice shall not in any manner prejudice the rights of the state. The judge of probate or the probate clerk or register shall, upon the request of the attorney general, prosecuting attorney, or treasurer of the county, furnish one or more transcripts of such decree which shall be docketed and filed by the county clerk of any county of the state without fees, in the same manner and with the same effect as provided by law for filing and docketing transcripts, judgments and decrees of circuit courts in this state. As a cumulative remedy for the collection of the tax, the state may proceed by an action of *assumpsit* in any court of competent jurisdiction. Whenever the probate judge shall issue a citation and take the proceedings specified in this section, he shall certify such fact to the county treasurer, together with an itemized bill of all expenses incurred for the services of such citation, and other lawful disbursements not otherwise paid, and thereupon the county treasurer shall pay the same from the general or contingent fund of the county. In all proceedings to which any county treasurer, or the auditor general, is cited to appear under sections eleven and twelve of this act and all proceedings arising or instituted hereunder, the attorney general shall represent the interests of the state therein, the compensation and expenses of necessary assistants and the expenses of the said attorney general to be paid after approval by the attorney general on the warrant of the auditor general out of the general fund in the state treasury. (Pub. Acts 1899, p. 291; Pub. Acts 1903, p. 284.)

**§ 761. Receipts—Transfer Tax-book.**

(Sec. 15.) Any person shall, upon the payment of the sum of fifty cents to the county treasurer, be entitled to a certified copy of the receipt issued by the county treasurer under section three of this act for the payment of any tax under this act, which receipt shall designate upon what real property, if any, such tax shall have been paid, by whom paid, and whether in full of such tax. Such receipts may be recorded in the office of the register of deeds of the county in which such property is situated, in a book to be kept by him for that purpose, which shall be labeled "Transfer Tax." (Pub. Acts 1899, p. 292; Pub. Acts 1903, p. 286.)

**§ 762. Fees of County Treasurer.**

(Sec. 16.) The treasurer of each county, except in counties where the treasurer is paid a salary in lieu of fees, shall be allowed on each and all taxes paid and accounted for by him under this act one per centum. Such fees shall be in addition to the fees or compensation now allowed by law, to such officers, and shall be paid out of the general fund or contingent fund of the different counties. (Pub. Acts 1899, p. 292; Pub. Acts 1903, p. 286.)

**§ 763. Record to be Kept by Probate Judge.**

(Sec. 17.) The auditor general shall furnish to each judge of probate a book, which shall be a public record, in which he shall enter a formal order containing the name of every decedent upon whose estate letters of administration or letters testamentary or ancillary letters have issued, the date of death, and place of residence at the time of death of such decedent, the names, places of residence and relationship to him of his heirs at law, in case he died intestate or left estate not disposed of by will; the names, places of residence, and relationship to him of the legatees and devisees in the will of the decedent, in case he died testate, the ages of all life tenants and beneficiaries under life estates, the clear market value of his real and personal property, the clear market value of the property, real and personal, passing to each heir, legatee and devisee, and the clear market value of annuities, life estates, terms of years, and other property of such decedent, or given by him in his will and otherwise, as fixed and determined by the judge of probate, and the amount of tax assessed thereon, and the amount of tax assessed on the share of each heir, legatee and devisee, when from the records of the court or the testimony given there appears to be property in such estate liable to tax under this act; provided, the description of no real estate need be given except such as is taxable under this act, and a sufficiently definite description shall be given to fully identify such taxable real estate and the persons to whom the several parcels are devised. He shall also enter in said book the name, date of death, and place of residence at time of death of every decedent, grantor, vendor or donor who has made a transfer of property in contemplation of death or intended to take effect in possession of enjoyment at or after his death, subject to tax under this act; the name and residence of the grantee, vendee or donee and his relationship to the grantor, vendor or donor, the clear market value as determined by the judge of probate of the property so transferred by him and the tax determined by the court payable thereon. These entries shall be made from data contained in the papers filed in the probate court and testimony taken in any proceedings relating to the estate of the decedent. The judge of probate shall also enter in such book the amount of the real and personal property of such decedent as shown by the inventory thereof when made and filed in his office. In case the judge of probate shall determine the amount of tax to be paid upon any specific legacy or devise or upon the real estate of a decedent before the determination of the tax by him upon the estate as a whole, only such entries need be made in such book in that particular case as refer to such legacy or devise or real estate, but it shall be distinctly stated in said book



that it is but a partial determination by the judge of probate of the tax due from the estate. Whenever the determination of the tax in such estate by the judge of probate is general or final, the deductions made by the judge of probate from the full value of the estate shall be particularly specified, so that the several reasons for the deductions made shall clearly appear upon the record; such record so required to be furnished by the auditor general shall be in the following form, and shall be of such size and so arranged as he shall determine will best meet the requirements of this act:

Abstract of Taxable Inheritances. Vol. No..... Page Form of record.  
No. ....

State of Michigan.

The Probate Court for the County of .....

At a session of said court held at ....., in said county, the .... day  
of ....., A. D. 19....

Present, The Honorable ....., Probate Judge.

In the Matter of the Inheritance Tax upon Transfers in the Estate of  
....., Deceased.

In this matter it being represented to me and appearing that the said deceased was, at the time of his death on the .... day of ....., a resident of ....., and possessed of property the transfer of which or some interest or estate therein is taxable under the inheritance tax law (act 188 of the public acts of 1899 and ..... of 1903); that ..... of ....., was duly and regularly appointed ..... of the said estate and ....., and that as appears from the inventory on file in this court, the amount of property belonging to said estate is stated to be as follows: Personal property, \$ .....; real property, \$ .....

It further appears and I hereby find that the debts of said deceased owing at the time of his death (exclusive of interest accruing thereafter) amount to \$.....; that the funeral expenses of said deceased amount to \$.....; and that the expenses of administration of the estate of said decedent (exclusive of all items of disbursement for repairs to buildings or other property belonging to, or taxes accruing after death, upon the estate of said deceased, all allowances for the support of widow and children of said deceased, expenses incurred in contesting the will of said deceased, and other items of disbursements for the benefit of the beneficiaries of said estate, not strictly expenses of administration) amount to the sum of \$.....; the total debts and expenses of administration being \$.....

After due and careful investigation, examination and consideration, I find and determine that the clear market value of all of said decedent's personal property and real estate, at the date of his death, was as follows: Personal property, \$.....; real property, \$.....; and that after deduction therefrom of the total debts and expenses of administration (debts secured upon realty being deducted from the value of the real estate, and debts unsecured and secured on personalty being deducted from the

value of the personalty), there remains subject to taxation under the provisions of said act before deducting statutory exemptions, transfers of personal property to the amount of \$.....; and transfers of real property to the amount of \$.....; and that of said transfers certain interests hereinafter set forth in detail in the schedule hereto are not presently taxable by reason of the following contingency, rendering it impossible to determine presently the value of the interests passing and the amount of the tax thereon, namely, .....

And I hereby find and determine that the tax upon the presently taxable transfers in said estate amounts to the sum of \$..... and find that the several names, residences, relationships and ages, where interest consists of life estates or annuities, of the several beneficiaries, together with the character and amount of the several interests or estates passing thereto, the rate of tax to which each is subject, and the portion of the tax fixed upon, apportioned to, and required to be borne by each of the several taxable transfers, is as set forth in detail in the following schedule.

(The schedule shall contain the following headings for the several columns and space for sufficient entries, remarks, etc.)

A	B	C	D	E	F
Name of Heir at Law, Legatee or Devisee to whom estate passes.	Residence.	Relationship.	Age of Life Tenant or Annuitant.	Rate of Tax. ——— Per Cent.	Value of Legacy or Personal Estate Passing.

G	H	I	J	K	L
Value of Personal Estate Exempt.	Value of Legacy or Personal Estate Taxable.	Amount of Tax on Personal Estate	Value of Real Estate Passing.	Value of Real Estate Exempt.	Value of Real Estate Taxable.

M	N	O	P	Q	R
Amount of Tax on Real Estate.	Value of Annuities, Life Estates, etc., Passing.	Value of Annuities Life Estates, etc., Exempt.	Value of Annuities, Life Estates, etc., Taxable.	Amount of Tax on Annuities, Life Estates, etc.	Total Amount of Tax.

Remarks: Including descriptions of real estate taxed and any explanations necessary to a complete understanding of the foregoing entries.

.....,

Judge of Probate.

The form of which said order, exclusive of the schedule, shall be varied to meet the requirements of special cases, but none of the matter required thereby shall be omitted. (Pub. Acts 1899, p. 293; Pub. Acts 1903, p. 286.)

**§ 764. Copies of Letters and Forms—Report of Register of Deeds—Property of Nonresident.**

(Sec. 18.) Each judge of probate shall, within three days after he shall have determined the tax and entered the order required in the preceding section, make a duly certified copy of such order upon forms furnished by the auditor general, containing all the data and matter required to be entered in such book, one of which shall be immediately delivered to the county treasurer, from which data the said county treasurer shall obtain the information for making the duplicate receipt required by this act, and the other transmitted to the auditor general. If in any calendar quarter beginning January, April, July or October first in each year, there has been no tax determined, the judge of probate shall make a report to the auditor general affirmatively showing this fact. The register of deeds of each county shall, upon blanks prescribed and furnished by the auditor general, as often as any deed or other conveyance is filed or recorded in his office of any property which appears to have been made in contemplation of death or intended to take effect in possession or enjoyment after the death of the grantor or vendor, make reports in duplicate containing a statement of the name and place of residence of such grantor or vendor, the name, relationship and place of residence of the grantee or vendee, and a description and the value of the property transferred and the consideration for the transfer as stated in the instrument filed or recorded, one of which duplicates shall be immediately delivered to the county treasurer, and the other transmitted to the auditor general. Whenever any nonresident shall die leaving property, or any interest therein, in this state which has not been duly administered under the laws of this state and it shall be necessary to have the question of the taxation of the transfer thereof determined, such question may be presented and determined upon petition to be filed by the attorney general in any probate court of this state. The said petition shall set forth the name of the decedent; residence at time of death; the total amount of property constituting said estate; a description of and the value of all property in Michigan; and any and all such other data as may be necessary to inform the court of the facts in connection with such matter. It shall be the duty of the probate court with which such petition is filed to fix a date for hearing thereon and to give notice of such hearing in such manner as shall be prescribed. Publication of the notice of such hearing shall not be necessary unless ordered by the court. It shall be the duty of the executor, administrator, trustee or any interested party in said estate to furnish all such facts, data, information, reports and certified copies of proceedings had in connection with said estate in any other court, as shall be required by the attorney general or directed by the probate court. The probate court shall appoint a resident of Michigan to represent the said estate at such hearing and the person so appointed shall perform such duties as shall be required by the court. The person so appointed shall have and possess all of the powers of an executor or administrator for the purposes of this section, but shall not be personally liable for any inheritance tax in said estate and shall not be required to give any bond unless so directed by the court. The said

probate court shall at the hearing on said petition or at an adjourned hearing, determine whether the transfer of such property is taxable and if found taxable, he shall proceed as in all other cases to fix and determine the amount thereof. If it is found that the transfer of such property is not taxable, an order to that effect shall be entered in the said probate court. A redetermination of said order may be had and an appeal therefrom may be taken in the same manner provided for in this act. A certified copy of all such orders determining that there is no inheritance tax due and payable may be procured from the probate court upon the payment of fifty cents; provided, that no order shall be entered in any such case until there is filed in said probate court receipts showing full payment of all expenses incurred including compensation due the person appointed to represent said estate, all of which expenses or compensation shall be paid by the executor, administrator or any person interested in said estate; provided, further, that in case it may be necessary to have any such property subjected to regular probate proceedings in this state, or if any such estate shall have been administered in this state, the right to proceed under this section shall be discretionary with the probate court. This section shall not operate to relieve any such person as is referred to in section nine of this act from the liability therein expressed until sixty days after the date of entry of the order determining that there is no tax upon the transfers in said estate, or in case a tax is determined, until proper receipts showing payment thereof have been duly signed by the state treasurer and countersigned by the auditor general. (Pub. Acts 1899, p. 293; Pub. Acts 1903, p. 289; Pub. Acts 1911, p. 105.)

**§ 765. Report of County Treasurer—Examiners of Records.**

(Sec. 19.) Each county treasurer shall make a report under oath to the auditor general on January, April, July and October first of each year of all taxes received by him under this act during the preceding calendar quarter, stating for what estate and by whom and when paid. If in any calendar quarter the county treasurer has received no tax under this act, the report shall affirmatively show this fact. The form of such report shall be prescribed by the auditor general. If receipts issued by the county treasurer and money received thereon are not forwarded within the time specified in section three of this act, he shall pay interest at the rate of eight per centum per annum in addition to the amount of such delinquent taxes then in arrears. The auditor general may employ not to exceed four examiners whose duties shall be to make examinations of the records of the several probate courts, county treasurers and registers of deeds in this state and report their findings to him and perform such other duties under the provisions of this act as the auditor general may direct, at a salary of not to exceed fifteen hundred dollars per annum, payable in the same manner as the salaries of other state officers are now paid. The expenses of said examiners shall be paid out of the general fund in the state treasury upon allowance by the state board of auditors after approval by the auditor general. There is hereby appropriated out of the general fund in the state treasury a sufficient amount of money to carry out the provisions

of this section. The auditor general shall add to and incorporate in the state tax for the year nineteen hundred nine, and each year thereafter, a sufficient sum to reimburse the general fund in the state treasury for the amount herein appropriated. (Pub. Acts 1899, p. 294; Pub. Acts 1903, p. 290; Pub. Acts 1907, p. 207; Pub. Acts 1909, p. 71.)

**§ 766. Payment to State Treasurer—Application of Funds.**

(Sec. 20.) All taxes levied and collected under this act shall be paid into the state treasury, and be applied in paying the interest upon the primary school, university and other educational funds, and the interest and principal of the state debt in the order herein recited, until the extinguishment of the state debt, other than the amounts due to educational funds, when such taxes shall be added to and constitute a part of the primary school interest fund, in pursuance of and in compliance with section one of article fourteen of the constitution of this state. (Pub. Acts 1899, p. 294.)

**§ 767. Definitions of Terms.**

(Sec. 21.) The words "estate" and "property" as used in this act shall be taken to mean the property or interest therein of the testator, intestate, grantor, bargainor, or vendor, passing or transferred to those not herein specifically exempted from the provisions of this act, and not as the property or interest therein passing or transferred to the individual legatees, devisees, heirs, next of kin, grantees, donees, or vendees, and shall include all property or interest therein whether situated within or without this state. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift in the manner herein prescribed. The words "county treasurer," "prosecuting attorney" as used in this act shall be taken to mean the county treasurer or prosecuting attorney of the county having jurisdiction in section ten of this act. (Pub. Acts 1899, p. 294; Pub. Acts 1903, p. 290.)

**§ 768. Time When Statute Takes Effect.**

(Sec. 22.) No heir, legatee, beneficiary, trustee, executor, administrator or surety shall be held liable for any inheritance tax upon the transfer of property in any estate in which the property has been distributed by order of the court prior to January first nineteen hundred five; nor where the executor or administrator or trustee has been discharged by order of the court prior to January first, nineteen hundred five; nor where the estate has been closed prior to January first, nineteen hundred five. All inheritance taxes which may have been assessed in any such estate as comes within the provisions of this act shall not be subject to enforcement, and all inheritance tax liens upon such property are hereby released. (Pub. Acts 1909, p. 700.)

## CHAPTER XXXVIII.

## MINNESOTA STATUTE.

*(Laws of 1905, c. 288; Revised Laws Supplement 1909, pp. 259-266; Laws of 1911, pp. 274, 516.)*

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- § 801. Validity of Previous Proceedings.
- § 802. Effect of This Act on Pending Proceedings.
- § 769. Transfers Subject to Tax.

Sec. 1. A tax shall be and is hereby imposed upon any transfer of prop-  
erty, real, personal or mixed, or any interest therein, or income therefrom

in trust or otherwise, to any person, association or corporation, except county, town or municipal corporation within the state, for strictly county, town or municipal purposes, in the following cases:

(1) When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state.

(2) When a transfer is by will or intestate law, of property within the state or within its jurisdiction and the decedent was a nonresident of the state at the time of his death.

(3) When the transfer is of property made by a resident or by a nonresident when such nonresident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

(4) Such tax shall be imposed when any such person or corporation become beneficially entitled, in possession or expectancy, to any property or the income thereof, by any such transfer whether made before or after the passage of this act.

(5) Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure. (Laws 1905, c. 288; Rev. Laws Sup. 1909, p. 259; Laws 1911, p. 516.)

#### § 770. Computation of Tax.

Sec. 2. The tax so imposed shall be computed upon the true and full value in money of such property at the rates hereinafter prescribed and only upon the excess of the exemptions hereinafter granted. (Rev. Laws Sup. 1909, p. 260; Laws 1911, p. 516.)

#### § 771. Rates of Taxation.

Sec. 2a. When the property or any beneficial interest therein passes by any such transfer where the amount of the property shall exceed in value the exemption hereinafter specified and shall not exceed in value fifteen thousand dollars the tax hereby imposed shall be:

(1) Where the person entitled to any beneficial interest in such property shall be the wife, or lineal issue, at the rate of one per centum of the clear value of such interest in such property.

(2) Where the person or persons entitled to any beneficial interest in such property shall be the husband, lineal ancestor of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one and one-half per centum of the clear value of such interest in such property.

(3) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife, or widow of a son, or the husband of a daughter of the decedent, at the rate of three per centum of the clear value of such interest in such property.

(4) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother or a descendant of a brother or sister of the father or mother of the decedent, at the rate of four per centum of the clear value of such interest in such property.

(5) Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear value of such interest in such property. (Laws 1905, c. 288; Rev. Laws Sup. 1909, p. 260; Laws 1911, p. 517.)

#### § 772. Rates of Taxation.

Sec. 2b. The foregoing rates in section 2a are for convenience termed the primary rates.

When the amount of the clear value of such property or interest exceed fifteen thousand dollars, the rates of tax upon such excess shall be as follows:

(1) Upon all in excess of fifteen thousand dollars and up to thirty thousand dollars one and one-half times the primary rates.

(2) Upon all in excess of thirty thousand dollars and up to fifty thousand dollars, two times the primary rates.

(3) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, two and one-half times the primary rates.

(4) Upon all in excess of one hundred thousand dollars, three times the primary rates. (Laws 1905, c. 288; Rev. Laws Sup. 1909, p. 260; Laws 1911, p. 518.)

#### § 773. Transfers Exempt from Taxation.

Sec. 2c. The following exemptions from the tax are hereby allowed:

(1) All property transferred to municipal corporations within the state for strictly county, town or municipal purposes, shall be exempt.

(2) Property of the clear value of ten thousand dollars transferred to the widow of the decedent (or husband of the decedent, each of the lineal



issue of the decedent, or any child adopted as such in conformity with the laws of this state, or any child to whom the decedent for not less than ten (10) years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child) shall be exempt.

(3) Property of the clear value of three thousand dollars transferred to each of the lineal ancestors of the decedent shall be exempt.

(4) Property of the clear value of one thousand dollars transferred to each of the persons described in the third subdivision of section two a (2a) shall be exempt.

(5) Property of the clear value of two hundred and fifty dollars transferred to each of the persons described in the fourth subdivision of section two a (2a) shall be exempt.

(6) Property of the clear value of one hundred dollars transferred to each of the persons and corporations described in the fifth subdivision of section two a (2a) shall be exempt, provided, however, that property of the clear value of two thousand five hundred dollars transferred to a public hospital, academy, college, university, seminary of learning, church or institution of purely public charity, within this state, shall be exempt. (Laws 1905, c. 1905; Rev. Laws Sup. 1909, p. 260; Laws 1911, p. 518.)

Sec. 2d. This act [the foregoing sections 1, 2, 2a, 2b, 2c] shall take effect and be in force from and after July 1, 1911, provided, however, that the provisions of this act shall apply only to legacies, inheritances, devises and transfers received from persons who shall die subsequent to the passage of this act; all gifts, legacies, inheritances and devises heretofore or hereafter received from any person who shall have died prior to the passage of this amendatory act shall be taxed and shall be subject to the provisions of sections 1 and 2 of chapter 288, Laws 1905, to the same extent and in the same manner as though this amendatory act had not been passed. (Laws 1911, p. 519.)

#### § 774. Time When Statute Takes Effect—Valuation of Property.

Sec. 3. All taxes imposed by this act shall take effect at and upon the death of the person from whom the transfer is made, and shall be due and payable at the expiration of one year from such death, except as otherwise provided in this act.

The value of every future or limited estate, income, interest or annuity dependent upon any life or lives in being, shall be determined by the rule, method and standard of mortality and value employed by the commissioner of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies, except that the rate of interest for making such computations shall be five per centum per annum.

When any transfer is made in trust for any person or persons or corporation or corporations, and the right of the beneficiaries of said trust to receive the property embraced in said trust is susceptible of present valua-

tion, then and in such case the tax thereon shall be paid at the same time and in the same manner, and in like amount, that would be the case if the beneficiaries of such trust received the same directly from the decedent or the persons from whom the property is transferred.

When an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting.

When property is transferred in trust or otherwise, and the rights, interest or estates of the transferee are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of said contingencies or conditions, would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this act, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this article, with interest thereon at the rate of three per centum per annum from the time of payment. Such return of overpayment shall be made in the manner provided by section 21c.

In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made on account of any contingent encumbrance thereon, nor on account of any contingency upon the happening of which the estate or property, or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such encumbrance taking effect as an actual burden upon the interest of the beneficiary or in the event of the abridgment, defeat or diminution of said estate or property, or interest therein, as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax on account of the encumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section 21c.

Where any property shall, after the passage of this act, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interests is derived.

The tax on any devise, bequest, legacy, gift or transfer limited, conditioned, dependent or determinable upon the happening of any contingency or future event, by reason of which the full and true value thereof cannot be ascertained as provided for by the provisions of this act at or before the time when the taxes become due and payable as hereinbefore provided, shall accrue and become due and payable when the person or corporation beneficially entitled thereto shall come into actual possession or enjoyment thereof.

Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited. (Laws 1905, c. 288; Rev. Laws Sup. 1909, p. 260; Laws 1911, p. 274.)

#### § 775. Collection of Tax by Executor.

Sec. 4. Any administrator, executor or trustee having in charge or in trust any property for distribution embraced in or belonging to any inheritance, devise, bequest, legacy or gift, subject to the tax thereon as imposed by this act, shall deduct the tax therefrom, and within thirty days thereafter he shall pay over the same to the county treasurer as herein provided. If such property be not in money, he shall collect the tax on such inheritance, devise, bequest, legacy or gift upon the appraised value thereof, from the person entitled thereto. He shall not deliver, or be compelled to deliver, any property embraced in any inheritance, devise, bequest, legacy or gift, subject to tax under this act, to any person until he shall have collected the tax thereon. (Laws 1901, c. 1905; Rev. Laws Sup. 1909, p. 261.)

#### § 776. Payment to Treasurer—Receipts.

Sec. 5. The tax imposed by this act upon inheritances, devises, bequests or legacies shall be paid to the treasurer of the county in which the probate court having jurisdiction, as herein provided, is located; and the tax so imposed upon gifts shall be payable to the state treasurer, and the treasurer to whom the tax is paid shall give the executor, administrator, trustee or person paying such tax, duplicate receipts therefor, one of which shall be immediately transmitted to the state auditor, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof; and where such tax is paid to the county treasurer he shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts. No executor, administrator, or trustee shall be entitled to a final accounting of an estate, in the settlement of which a tax may become due under the provisions of this act, until he shall produce a receipt, so sealed and countersigned by the state auditor, or a

certified copy of the same. All taxes paid into the county treasury under the provisions of this act shall immediately be paid into the state treasury upon the warrant of the state auditor and shall belong to and be a part of the revenue fund of the state. (Laws 1905, c. 288; Rev. Laws Sup. 1909, p. 261.)

#### **§ 777. Lien of Tax.**

Sec. 6. Every tax imposed by this act shall be a lien upon the property embraced in any inheritance, devise, bequest, legacy or gift until paid, and the person to whom such property is transferred and the administrators, executors and trustees of every estate embracing such property shall be personally liable for such tax, until its payment, to the extent of the value of such property. (Laws 1905, c. 288; Rev. Laws Sup. 1909, p. 261.)

#### **§ 778. Interest on Tax.**

Sec. 7. If such tax is not paid within one year from the accruing thereof, interest shall be charged and collected thereon at the rate of seven per centum per annum from the time the tax is due, unless, by reason of claims upon the estate, necessary litigation or other unavoidable cause of delay, such tax cannot be determined as herein provided; in such case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which seven per centum shall be charged. (Laws 1905, c. 288; Rev. Laws Sup. 1909, p. 261.)

#### **§ 779. Sale of Property to Pay Tax.**

Sec. 8. Every executor, administrator or trustee shall have full power to sell so much of the property embraced in any inheritance, devise, bequest or legacy as will enable him to pay the tax imposed by this act, in the same manner as he might be entitled by law to do for the payment of the debts of a testator or intestate. (Laws 1905, c. 288; Rev. Laws Sup. 1909, p. 261.)

#### **§ 780. Legacy Charged upon Real Estate.**

Sec. 9. If any bequest or legacy shall be charged upon or payable out of any property, the heir or devisee shall deduct such tax therefrom and pay such tax to the administrator, executor or trustee, and the tax shall remain a lien or charge on such property until paid; and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the bequest or legacy might be enforced, or by the county attorney under section 20 [1038-20] of this act. If any bequest or legacy shall be given in money to any person for a limited period, the administrator, executor or trustee shall retain the tax upon the whole amount; but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him to make an apportionment, if the case requires, of the sum to be paid into his hands by such legatee or beneficiary, and for such further order relative thereto, as the case may require. (Laws 1905, c. 288; Rev. Laws Sup. 1909, p. 262.)

**§ 781. Refund of Tax Erroneously Paid.**

Sec. 10. When any tax imposed by this act shall have been erroneously paid, wholly or in part, the person paying the same shall be entitled to a refundment of the amount so erroneously paid, and the auditor of state shall, upon satisfactory proofs presented to him of the facts relating thereto, draw his warrant upon the state treasurer for the amount thereof, in favor of the person entitled thereto; provided, however, that all applications for such refunding of erroneous taxes shall be made within three years from the payment thereof. (Laws 1905, c. 288; Rev. Laws Sup. 1909, p. 262.)

**§ 782. Nonresidents—Transfer or Delivery of Stocks and Securities—Notice.**

Sec. 11. Subdivision 1. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligation in this state, standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the state treasurer on the transfer thereof, and no such assignment or transfer shall be valid until such tax is paid.

If any nonresident of this state dies owning personal property in this state, such property may be transferred or assigned by the personal representative of, or trustee for the decedent, only after such representative or trustee shall have procured a certificate from the attorney general consenting to the transfer of such property. Such consent shall be issued by the attorney general only in case there is no tax due hereunder; or in case there is a tax, when the same shall have been paid.

Any personal representative, trustee, heir or legatee of a nonresident decedent desiring to transfer property having its situs in this state may make application to the attorney general for the determination of whether there is any tax due to the state on account of the transfer of the decedent's property and such applicant shall furnish to the attorney general therewith an affidavit setting forth a description of all property owned by the decedent at the time of his death and having its situs in the state of Minnesota, the value of such property at the time of said decedent's death; also when required by the attorney general, a description of and statement of the true value of all the property owned by the decedent at the time of his death and having its situs outside the state of Minnesota, and also a schedule or statement of the valid claims against the estate of the decedent, including the expenses of his last sickness and funeral and the expenses of administering his estate. Such person shall also, on request of the attorney general, furnish to the latter a certified copy of the last will of the decedent in case he died testate, or an affidavit setting forth the names, ages and residences of the heirs at law of the decedent in case he died intestate and the proportion of the entire estate of such decedent inherited by each of said persons, and the relation, if any, which each legatee, devisee, heir, or transferee sustained to the decedent or person from whom the transfer was made. Such affidavits shall be subscribed and sworn to by the personal representative of the decedent or some other person having knowledge of the facts therein set forth.

The statements in any such affidavits as to value or otherwise shall not be binding on the attorney general in case he believes the same to be untrue.

From the information so furnished to him and such other information as he may have with reference thereto, the attorney general shall, with reasonable expedition, determine the amount of tax, if any, due to the state under the provisions of this act and notify the person making the application of the amount thereof claimed to be due. On payment of the tax so determined to be due or in case there is no tax due to the state, the attorney general shall issue a consent to the transfer of the property so owned by the decedent.

No corporation organized under the laws of the state of Minnesota shall transfer on its books any shares of its capital stock standing in the name of a nonresident decedent, or in trust for a nonresident decedent, without the consent of the attorney general first procured as hereinbefore provided for. Any corporation violating the provisions of this section shall be liable to the state for the amount of any tax due to the state on a transfer of any such shares of stock, and in addition thereto a penalty equal to ten per cent of the amount of such tax; to be recovered in a civil action in the name of and for the benefit of the state.

Any person aggrieved by the determination of the attorney general in any matter hereinbefore provided for, may, within twenty days thereafter appeal to the district court of Hennepin county, or Ramsey county, Minnesota, by filing with the attorney general a notice in writing setting forth his objections to such determination and that he appeals therefrom and thereupon within ten days thereafter the attorney general shall transmit the original papers and records which have been filed with him in relation to such application for consent, to the clerk of the district court to which the appeal shall have been taken, and thereupon said court shall acquire jurisdiction of such application and proceeding. Upon eight days' notice given to the attorney general by the appellant, the matter may be brought on for hearing and determination by such court either in term time or vacation, at a general or special term of said court, or at chambers as may be directed by order of the court. The said court may determine any and all questions of law and fact necessary to the enforcement of the provisions of this act according to its intent and purpose, and may by order direct the correction, amendment or modification or [of] any determination made by the attorney general.

On such hearing either party may introduce the testimony of witnesses and other evidence in the same manner and subject to the same rules which govern in civil actions. When necessary, the court may adjourn or continue its hearings from time to time, to enable the parties to secure the attendance of witnesses or the taking of depositions. Depositions may be taken and used in such proceedings in the same manner as is now provided by law for the taking of depositions in civil actions.

The attorney general and any person aggrieved by the order of the district court may appeal to the supreme court from any such order made by said courts, within the time and in the manner now provided by law for the taking of appeals from orders in civil actions.

Subdivision 2. No tax shall be imposed, however, upon any transfer of personal property within this state owned by a nonresident of this state at the time of his death, where by the laws of the state of the decedent's domicile, an inheritance, succession or transfer tax is imposed on transfers of personal

property of decedents, provided the laws of such state exempt, or do not impose a tax upon transfers of personal property of residents of Minnesota having its situs in such state. It is hereby expressly declared that the inclusion in this act of the provisions of this subdivision is not an indispensable inducement to the passage of this act, and if at any time the provisions of this subdivision shall be held to be unconstitutional, the other provisions of this act shall not be invalidated thereby. (Rev. Laws Sup. 1909, p. 262; Laws 1911, p. 276.)

**§ 783. Transfer or Delivery of Deposits or Securities—Notice.**

Sec. 12. No safe deposit company, bank or other institution, person or persons holding securities or assets of a decedent, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the county treasurer, personally or by representative, to examine said securities at the time of such delivery or transfer. If upon such examination the county treasurer or his said representatives shall for any cause deem it advisable that such securities or assets should not be immediately delivered or transferred, he may forthwith notify in writing such company, bank, institution or person to defer delivery or transfer thereof for a period not to exceed ten days from the date of such notice, and thereupon it shall be the duty of the party notified to defer such delivery or transfer until the time stated in such notice or until the revocation thereof within such ten days. Failure to serve the notice first above mentioned, or to allow such examination, or to defer the delivery of such securities or assets for the time stated in the second of such notices, shall render said safe deposit company, trust company, bank or other institution, person or persons, liable to the payment of the tax due upon the said security or assets, pursuant to the provisions of this act. (Rev. Laws Sup. 1909, p. 262.)

**§ 784. Application by Attorney General for Letters of Administration.**

Sec. 13. Upon the presentation of any petition to any probate court of this state for letters testamentary or of administration, or for ancillary letters, testamentary or of administration, the probate court shall cause a copy of the citation or order for the hearing of such petition to be served upon the county treasurer of his county not less than ten days prior to such hearing. The court shall thereupon, as soon as practicable after the granting of any such letters, proceed to ascertain and determine the value of every inheritance, devise, bequest or legacy embraced in or payable out of the estate in which such letters are granted and the taxes due thereon. The county treasurers of the several counties, and the attorney general, shall have the same rights to apply for letters of administration as are conferred upon creditors by law. (Laws 1905, c. 288; Rev. Laws Sup. 1909, p. 262; Laws 1911, p. 278.)

**§ 785. Appointment of Appraisers.**

Sec. 14. The probate court may, in any matter mentioned in the preceding section, either upon its own motion or upon the application of any interested party, including county treasurers and the attorney general, and as often as and when occasion requires, appoint one or more impartial and disinterested

persons as appraisers to appraise the true and full value of the property embraced in any inheritance, devise, bequest, or legacy, subject to the payment of any tax imposed by this act. (Laws 1905, c. 288; Rev. Laws Sup. 1909, p. 263; Laws 1911, p. 279.)

**§ 786. Appraisement at Full and True Value.**

Sec. 15. Every inheritance, devise, bequest, legacy, transfer or gift upon which a tax is imposed under this act shall be appraised at its full and true value immediately upon the death of decedent, or as soon thereafter as may be practicable; provided, however, that when such devise, bequest, legacy, transfer or gift shall be of such a nature that its true and full value cannot be ascertained, as herein provided, at such time, it shall be appraised in like manner at the time such value first becomes ascertainable. (Laws 1905, c. 288; Rev. Laws Sup. 1909, p. 263; Laws 1911, p. 279.)

**§ 787. Notice of Appraisement—Proceedings and Report—Compensation of Appraisers.**

Sec. 16. The appraisers appointed under the provisions of this act shall forthwith give notice by mail to all persons known to have a claim or interest in the inheritance, devise, bequest, legacy or gift to be appraised, including the county treasurer, attorney general, and such persons as the probate court may by order direct, of the time and place when they will make such appraisal. They shall at such time and place appraise the same at its full and true value, as herein prescribed, and for that purpose the probate court appointing said appraisers is authorized and empowered to issue subpoenas and compel the attendance of witnesses before such appraisers at the place fixed by the appraisers as the place where they will meet to hear such testimony and make such appraisal. Such appraisers may administer oaths or affirmations to such witnesses and require them to testify concerning any and all property owned by the decedent and the true value thereof and any disposition thereof which may have been made by the decedent during his lifetime or otherwise. The appraisers shall make a report in writing, setting forth their appraisal of the property embraced in each legacy, inheritance, devise or transfer, including any transfer made in contemplation of death, with the testimony of the witnesses examined and such other facts in relation to the property and its appraisal as may be requested by the attorney general, or directed by the order of the probate court. Such report shall be in writing and one copy thereof shall be filed in the probate court and the others shall be mailed to the attorney general at his office in the city of St. Paul, Minnesota.

Every appraiser shall be entitled to compensation at the rate of \$3.00 per day, and in extraordinary cases such additional sum per day, not exceeding \$7.00 altogether as may be allowed by the probate judge, for each day actually and necessarily employed in such appraisal, and his actual and necessary traveling expenses, and such witnesses and the officer or person serving any such subpoena shall be entitled to the same fees as are allowed witnesses or sheriffs for similar services in courts of record. The compensation and fees claimed by any person for services performed under this act shall be approved by the judge of probate who shall certify the amount thereof, to the state auditor,



who shall examine the same, and, if found correct, he shall draw his warrant upon the state treasury for the amount thereof in favor of the person entitled thereto.

Such warrants shall be paid out of the moneys appropriated for the payment of the expenses of inheritance tax collections. (Rev. Laws Sup. 1909, p. 263; Laws 1911, p. 279.)

**§ 788. Determination of Value of Estate and Amount of Tax.**

Sec. 17. The report of the appraisers shall be filed with the probate court, and from such report and other proof relating to any such estate before the probate court the court shall forthwith, as of course, determine the true and full value of all such estates and the amount of tax to which the same are liable; or the probate court may so determine the full and true value of all such estates and the amount of tax to which the same are liable without appointing appraisers. (Laws 1905, c. 288; Rev. Laws Sup. 1909, p. 264.)

**§ 789. Notice of Tax for Which Estate is Liable.**

Sec. 18. The probate court shall immediately give notice, upon the determination of the value of any inheritance, devise, bequest, legacy, transfer or gift which is taxable under this act, and the tax to which it is liable, to all parties known to be interested therein, including the state auditor, attorney general and the county treasurer.

Such notice shall be given by serving a copy on the attorney of all persons who may have appeared by attorney, and as to persons who have not so appeared, by mail, where the addressees of the persons to be notified are known or can be ascertained, otherwise such notice shall be given by publishing said notice once in a qualified newspaper. The expense of such publication shall be certified and paid by the state treasurer in the same manner as hereinbefore provided for the payment of the fees and expenses of appraisers. (Laws 1905, c. 288; Rev. Laws Sup. 1909, p. 264; Laws 1911, p. 280.)

**§ 790. Objections to Assessment—Reassessment.**

Sec. 19. Within thirty days after the assessment and determination by the probate court of any tax imposed by this act, the attorney general, county treasurer or any person interested therein, may file with said court objections thereto, in writing, and praying for a reassessment and redetermination of such tax. Upon any objection being so filed the probate court shall appoint a time for the hearing thereof and cause notice of such hearing to be given to the attorney general, county treasurer and all parties interested at least ten days before the hearing thereof. Such notice shall be served in the manner provided for in section 18.

At the time appointed in such notice the court shall proceed to hear such objections and any evidence which may be offered in support thereof or opposition thereto; and if, after such hearing, said court shall be of the opinion that a reassessment or redetermination of such tax should be made, it shall, by order, set aside the assessment and determination theretofore made and order a reassessment in the same manner as if no assessment had been made, or the said court may, without ordering a resubmission to appraisers, set aside

the assessment and determination theretofore made and fix and determine the value of the property embraced in any legacy, inheritance, devise or transfer and fix and determine the amount of the tax thereon in accordance with the appraisal theretofore filed, so far as the same is not in dispute, and in accordance with the evidence introduced by the respective parties in interest as to any items of the appraisers' report which may have been objected to by any party interested, including the attorney general and the personal representatives of the decedent.

In any case where objections are filed by the attorney general as hereinbefore provided for, he shall, within ten days before the time set by the court for the hearing thereof, file with the clerk of the court a bill of particulars setting forth the items in any such report objected to and as to which he proposes to offer testimony; he shall also mail a copy thereof, within said time, to the personal representative of the decedent or the attorney or attorneys for the latter. In case objections are filed by any other person, he or she shall likewise file such a bill of particulars with the court and serve a copy thereof upon the attorney general within ten days after the filing of the objections. (Laws 1905, c. 288; Rev. Laws Sup. 1909, p. 264; Laws 1911, p. 281.)

**§ 791. Notice to County Attorney of Delinquencies—Proceedings to Enforce Tax.**

Sec. 20. If the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act after the refusal or neglect of the persons liable therefor to pay the same, he shall notify, in writing, the county attorney of his county, of such failure or neglect, and such county attorney, if he have probable cause to believe that such tax is due and unpaid, shall apply to the probate court for a citation, citing the persons liable to pay such tax to appear before the court on a day specified, not more than three months from the date of such citation, and show cause why the tax should not be paid. The judge of the probate court, upon such application, and whenever it shall appear to him that any such tax accruing under this act has not been paid as required by law, shall issue citation, and the service of such citation, and the time, manner and proof thereof, and the hearing and determination thereon, shall conform as near as may be to the provisions of the probate code of this state, and whenever it shall appear that any such tax is due and payable and the payment thereof cannot be enforced under the provisions of this act in said probate court, the person or corporation from whom the same is due is hereby made liable to the state for the amount of such tax, and it shall be the duty of the county attorney of the proper county to sue for in the name of the state and enforce the collection of such tax, and all taxes so collected shall be forthwith paid into the county treasury. It shall be the duty of said county attorney to appear for and represent the county treasurer on the hearing of such citation. (Laws 1905, c. 288; Rev. Laws Sup. 1909, p. 264.)

**§ 792. Records and Reports of Probate Court—Report of Register of Deeds.**

Sec. 21. The auditor of state shall furnish to each probate court a book which shall be a public record, and in which shall be entered by the judge

of said court the name of every decedent upon whose estate an application has been made for the issue of letters of administration, or letters testamentary or ancillary letters, the date and place of death of such decedent, names and places of residence and relationship to decedent of the heirs at law of such decedent, the estimated value of the property of such decedent, names and places of residence and relationship to decedent of the heirs at law of such decedent, the names and places of residence of the legatees, devisees and other beneficiaries in any will of such decedent, the amount of each legacy, and the estimated value of any property devised therein and to whom devised. These entries shall be made from data contained in the papers filed on such application or in any proceeding relating to the estate of the decedent. The judge of probate shall also enter in such book the amount of the property of any such decedent, as shown by the inventory thereof, when made and filed in his office, and the returns made by any appraisers appointed by him under this act, and the value of all inheritances, devises, bequests, legacies and gifts inherited from such decedent, or given by such decedent in his will or otherwise as fixed by the probate court, and the tax assessed thereon, and the amounts of any receipts for payment thereof filed with him. The state auditor shall also furnish forms for the reports to be made by such judge of probate, which shall correspond with the entries to be made in such book. Each judge of probate shall, on the first day of January, April, July and October of each year, make a report in duplicate upon the forms furnished by the state auditor containing all the data and matters required to be entered in such book, one of which shall be immediately delivered to the county treasurer and the other transmitted to the auditor of the state. The register of deeds of each county shall, at the same time, make reports in duplicate to the auditor of state, containing a statement of any conveyance filed or recorded in his office of any property which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor, with the name and place of residence of the vendor or vendee, and the description of the property transferred, as shown by such instrument, one of which duplicates shall be immediately delivered to the county treasurer and the other transmitted to the auditor of state. (Laws 1905, c. 288; Rev. Laws Sup. 1909, p. 264.)

**§ 793. Stipulation by Attorney General of Amount of Tax to be Paid.**

Sec. 21-A. The attorney general, by and with the consent and approval of the state auditor, in case of the estate of a nonresident decedent whose estate has not been probated in this state, and the consent and approval of the probate judge in the case of any estate probated in this state, expressed in writing, is hereby authorized and empowered to enter into an agreement with the trustees of any estate in which remainders or expectant estates are of such a nature or so disposed and circumstanced that the taxes are not presently payable or where the interests of the legatees or devisees are or were not ascertainable under the provisions of this chapter, at the time fixed for the appraisal and determination of the tax on estates and interests transferred in fee, and to thereby compound the tax upon such transfers up to

such terms as are deemed equitable and expedient; to grant a discharge to said trustees on account thereof upon payment of the taxes provided for in such composition agreement; provided, however, that no such composition shall be conclusive in favor of said trustees as against the interests of such cestui que trust as may possess either present rights of enjoyment, or fixed, absolute or indefeasible, rights of future enjoyment or of such as would possess such rights in the event of the immediate termination of any particular estate, unless they consent thereto either personally or by duly authorized attorney, when competent, or by guardian or committee. Composition agreements made, affected and entered into under the provisions of this section shall be executed in triplicate, and one copy thereof filed in the probate court of the county in which the tax is to be paid; one copy in the office of the attorney general and one copy shall be delivered to the persons paying the tax thereunder.

The attorney general shall not consent to the assignment or delivery of any property embraced in any legacy, devise or transfer from a nonresident decedent to a nonresident trustee thereof under the provisions of section 11, where the property embraced in such legacy, devise or transfer is so circumstanced and disposed of that the tax thereon cannot be presently ascertained, but is so circumstanced and disposed of as to authorize him to enter into a composition agreement with reference to the tax on any estate or interest therein as herein provided, until the tax on the transfer of any such estate or interest shall have been compounded and the tax paid as hereinbefore provided for; or in lieu thereof the trustee or other person to whom the possession of such property is delivered shall have made, executed and delivered to the attorney general, a bond to the state of Minnesota in an amount equal to the amount of tax which in any contingency may become due and owing to the state on account of the transfer of such property, such bond to be approved by the attorney general and conditioned for the payment to the state of Minnesota of any tax which may accrue to the state under this act on the subsequent transfer or delivery of the possession of such property to any person beneficially entitled thereto. The provisions of sections 4523, 4524 and 4525, Revised Laws 1905, shall apply to the execution of said bond and the qualification of the surety or sureties thereon.

No property having its situs in this state embraced in any legacy or devise bequeathed or devised to a nonresident trustee and circumstanced or disposed of as last hereinbefore described, shall be decreed and distributed by any court of this state to such nonresident trustee until he shall have compounded and paid the tax as provided for in this section; or in lieu thereof given a bond to the state as provided for in this section with reference to transfers of property owned by nonresident decedents. (Laws 1911, p. 282.)

#### **§ 794. Power of Attorney General to Issue Citations and Examine Books and Records.**

Sec. 21-B. The attorney general is hereby authorized and empowered to issue a citation to any person whom he may believe or have reason to believe

has any knowledge or information concerning any property which he believes or has reason to believe has been transferred by any person and as to which there is or may be a tax due to the state under the provisions of this act, and by such citation require such person to appear before him at a time and place to be designated in such citation and testify under oath as to any fact or information within his knowledge touching the quantity, value and description of any such property and its ownership and the disposition thereof which may have been made by any person, and to produce and submit to the inspection of the attorney general, any books, records, accounts or documents in the possession of or under the control of any person so cited. The attorney general shall also have power to inspect and examine the books, records and accounts of any person, firm or corporation, including the stock transfer books of any corporation, for the purpose of acquiring any information deemed necessary or desirable by him for the proper enforcement of this act and the collection of the full amount of the tax which may be due to the state hereunder. Any and all information acquired by the attorney general under and by virtue of the means and methods provided for by this section shall be deemed and held by him as confidential and shall not be disclosed by him except so far as the same may be necessary for the enforcement and collection of the inheritance tax provided for by this act.

Refusal of any person to attend before the attorney general in obedience to any such citation, or to testify, or produce any books, accounts, records or documents in his possession or under his control and submit the same to inspection of the attorney general when so required, may, upon application of the attorney general, be punished by any district court in the same manner as if the proceedings were pending in such court.

Witnesses so cited before the attorney general, and any sheriff or other officer serving such citation shall receive the same fees as are allowed in civil actions; to be paid by the attorney general out of the funds appropriated for the enforcement of this act. (Laws 1911, p. 283.)

#### § 795. Refund of Tax.

Sec. 21-C. Whenever, under the provisions of section 3 of this act, as amended, any person or corporation shall be entitled to a return of any part of a tax previously paid, he shall make application to the attorney general for a determination of the amount which he is entitled to have returned, and on such application shall furnish the attorney general with affidavits and other evidence showing the facts which entitle him to such return and the amount he is entitled to have returned. The attorney general shall thereupon determine the amount, if any, which the applicant is entitled to have returned, and shall certify his findings in regard thereto to the state auditor who shall thereupon issue his warrant on the state treasurer for the amount so certified by the attorney general and deliver such warrant to the persons entitled to the refund.

It shall be the duty of the state treasurer to pay such warrants out of any funds in the state treasury not otherwise appropriated. The moneys

necessary to pay such warrants are hereby appropriated out of any moneys in the state treasury not otherwise appropriated.

Any person aggrieved by the determination of the attorney general may appeal to the district court in the manner and with the same effect as is provided for in section 11. (Laws 1911, p. 284.)

**§ 796. Duty of State Auditor and Treasurer.**

Sec. 21-D. On or before the first of November in each year the state auditor shall compute the amount of inheritance tax which has been paid into the state treasury by the county treasurers of the several counties of this state, from estates of residents thereof, during the preceding fiscal year ending July 31st, and thereupon draw his warrant on the state treasurer in favor of each county from which any tax shall have been received during the fiscal year ending July 31st next preceding, for ten per cent of the amount of the inheritance tax money so received from each such county respectively, less ten per cent of any tax which has been returned under the provisions of the last preceding section and which was originally paid to the county treasurer of any such county, and transmit the same to the county auditor of each county, to be placed to the credit of the county revenue fund; provided, however, that the provisions of this section shall apply only to such moneys as shall be received as a tax on transfers from persons who shall die subsequent to the passage of this amendatory act.

It shall be the duty of the state treasurer to pay such warrants out of any funds in the state treasury not otherwise appropriated. The moneys necessary to pay such warrants are hereby appropriated out of any moneys in the state treasury not otherwise appropriated. (Laws 1911, p. 284.)

**§ 797. Seal of Attorney General.**

Sec. 21-E. The attorney general shall provide himself with a seal wherupon shall be inscribed the words:

"Attorney General, State of Minnesota, Inheritance Tax."

All his formal official acts done and performed under the provisions of this act shall be authenticated with such seal. (Laws 1911, p. 285.)

**§ 798. Assistant Attorney General in Inheritance Tax Matters.**

Sec. 21-F. The attorney general is hereby authorized to designate one of his assistants as "Assistant Attorney General in Charge of Inheritance Tax Matters." Such designation shall be in writing and filed in the office of the secretary of state and shall continue in force until revoked by the attorney general. The assistant so designated, so long as such designation remains unrevoked, shall have and may exercise all the rights, powers and privileges conferred on the attorney general by the provisions of this act and all the duties and obligations hereby imposed upon the attorney general are likewise imposed upon the assistant so designated. (Laws 1911, p. 285.)

**§ 799. Time When Act Takes Effect.**

Sec. 21-G. This act (secs. 3, 11, 13, 14, 15, 16, 18, 19, 21A, 21B, 21C, 21D, 21E, 21F) shall take effect and be in force from and after its passage. Approved April 18, 1911. (Laws 1911, p. 285.)

**§ 800. Repeal of Inconsistent Statutes.**

Sec. 22. All acts and parts of acts of this state relating to the taxation of inheritances, devises, bequests, legacies and gifts, so far as the same are inconsistent with the provisions of this act, are hereby repealed. (Laws 1905, c. 288; Rev. Laws Sup. 1909, p. 265.)

**§ 801. Validity of Previous Proceedings.**

Sec. 23. In all probate proceedings in any of the probate courts in this state where a general inventory of the property belonging to the estate of a deceased person, has heretofore been duly made and filed, and the regular and due appraisal of the property in or belonging to such estate has heretofore been actually made and the appraisers' certificate thereof, duly filed in the proper probate office, and the total value of such property as thus appraised is given as less than ten thousand dollars, all such probate proceedings and all interlocutory and final decrees made therein, and the records of any such decrees are hereby declared legal and valid and such proceedings, decrees and records shall have full force and effect as evidence in all the courts of this state, as against the objection that no copy of the citation or order for hearing on the petition for letters testamentary, or of administration, or ancillary letters, was served upon the county treasurer of the county in which such proceedings were had, prior to the time of such hearing. (Laws 1905, c. 288; Rev. Laws Sup. 1909, p. 265.)

**§ 802. Effect of This Act on Pending Proceedings.**

Sec. 24. This act shall not affect or apply to any action or proceeding now pending in any of the courts of this state other than probate courts. (Laws 1907, c. 444; Rev. Laws Sup. 1909, p. 266.)

## CHAPTER XXXIX.

## MISSOURI STATUTE.

(Revised Statutes of 1899, secs. 299-322; Laws of 1901, p. 43; Laws of 1903, p. 52; Ann. Stats. 1906, pp. 446-456.)

- § 804. Transfers Subject to Tax—Rates—Lien of Tax—Persons Liable.
- § 805. Time for Payment—Interest and Discount—Lien—Bond of Executor.
- § 806. Payment and Report by Collector to State Auditor.
- § 807. Revenue to be Known as "State Seminary Moneys."
- § 808. Revenue to be Known as "Educational Fund."
- § 809. Payment of Tax on Reversions, Remainders and Expectancies.
- § 810. Bequests to Executors in Lieu of Commissions.
- § 811. Collection of Tax by Executor.
- § 812. Payment of Tax on Gift for a Limited Period.
- § 813. Payment by Executor to Collector of Revenue—Receipts.
- § 814. Refund of Tax.
- § 815. Executor to Notify Probate Judge of Taxable Transfers.
- § 816. Transfer of Stocks or Loans by Foreign Executor.
- § 817. Appraisers and Appraisement.
- § 818. Determination of Value of Estate and Assessment of Tax.
- § 819. Reappraisement.
- § 820. Appraiser Taking Illegal Fees—Penalty.
- § 821. Jurisdiction of Probate Court—Prosecuting Attorney to Represent State.
- § 822. Records to be Kept by Probate Judge.
- § 823. Reports to be Made by Probate Judge and County Recorder.
- § 824. Notice to Collector of Unpaid Tax—Proceedings for Collection.
- § 825. Receipts for Payment of Tax.
- § 826. Commissions for Collecting Tax.
- § 827. Repeal of Inconsistent Statutes.

§ 804. Transfers Subject to Tax—Rates—Lien of Tax—Persons Liable.

Sec. 299. All property which shall pass by will, or by the intestate laws of this state from any person who may die seised or possessed of the same while a resident of this state, or, if decedent was not a resident of this state at the time of death, which property or any part thereof shall be within this state, or any interest therein or income therefrom, which shall be transferred by deed, grant, bargain, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor, bargainor, vendor or donor, to any person or persons, or to any body politic or corporate, either directly or in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectancy, to any property or the income thereof, other than to or for the use of the father, mother, husband, wife, legally adopted children, or direct lineal descendant of the testator, intestate, grantor,



bargainor, vendor or donor, except property conveyed for some educational, charitable or religious purpose exclusively, shall be and is subject to the payment of a collateral inheritance tax of five dollars for each and every one hundred dollars of the clear market value of such property, and at and after the same rate for every less amount, to be paid to the collector of revenue of the proper county, and for the purposes of this article, the city of St. Louis shall be affected through its corresponding officers as if it were a county, for the use of the state as hereinafter provided; and for the enforcement and collection of such tax there is hereby created against the property affected thereby a first lien in favor of the state of Missouri, upon which a civil action may be prosecuted in any court having proper jurisdiction; and all heirs, next of kin, legatees and devisees, administrators, executors and trustees, grantees, vendees and donees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed; provided, that all collateral inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall cease to be a lien as against any purchasers of the property; provided, further, that the word "property," as used in this section, shall be taken to mean the property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, vendees or donees, and not as the property or interest therein of the testator, intestate, grantor, bargainor, vendor or donor. (Rev. Stats. 1899, sec. 299; Ann. Stats. 1906, p. 446.)

**§ 805. Time for Payment—Interest and Discount—Lien—Bond of Executor.**

Sec. 300. All taxes imposed by this act, except as hereinafter provided, shall be due and payable at the death of the person rendering such property subject to such taxation, and interest, at the same rate as is now provided by law for delinquent taxes, shall be charged and collected thereon for such time as said tax is not paid; provided, that if said tax is paid within one year from the accruing thereof no interest shall be charged or collected thereon, and if said tax is paid within six months from the accruing thereof a discount of five per cent shall be allowed and deducted from said tax; provided, further, that if by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay the estate of the decedent or any part thereof cannot be settled up at the end of the year from his or her decease, the probate court, or the judge thereof in vacation, may make necessary extensions of time for the payment of such taxes, but no single extension shall exceed one year, and in such cases only six per cent per annum shall be charged upon the said tax from the death of the decedent to the expiration of the period for which the extension of time was granted, after which interest, at the same rate as is now provided by law for delinquent taxes shall be charged; and in all such cases the tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid, and the executors, administrators or trustees shall give a bond, to the people of the state of Missouri, in a penalty of three times the amount of the said tax, with such sureties as the probate judge of the proper county may approve, conditioned for the payment of said tax,

and interest thereon, at the expiration of such period, which bond shall be filed in the office of said probate judge. (Rev. Stats. 1899, sec. 300; Ann. Stats. 1906, p. 447.)

**§ 806. Payment and Report by Collector to State Auditor.**

Sec. 301. The collector of each county shall, on or before the fifteenth day of each month, pay to the state treasurer all taxes, collected or received by him, under the provisions of this act, before the first day of said month, deducting therefrom his commissions, as provided in section 321 of this article, and all lawful disbursements made by him, in accordance with the provisions of this article, upon the certificate of the probate judge of his county of which collection and payment he shall make a report under oath to the state auditor, on or before the fifth day of each month, stating for what estate paid, and in such form and containing such particulars as the state auditor may prescribe; and for any failure to make such monthly payments he shall be subject to the penalty prescribed by section seven thousand six hundred and thirty-six (7636) of the Revised Statutes of 1889. (Rev. Stats. 1899, sec. 301; Ann. Stats. 1906, p. 448.)

**§ 807. Revenue to be Known as "State Seminary Moneys."**

Sec. 302. The moneys received by the state treasurer under the provisions of this article shall be deposited in the state treasury to the credit of the fund now existing in the state treasury, and known as the "state seminary moneys," for the maintenance, support and better equipment of the buildings, apparatus, books, instruction, etc., of the university of the state of Missouri, to an amount not exceeding in any one year the equivalent of one-tenth of one mill upon every dollar, of the assessed valuation of taxable property of this state for the said year; provided, that one-fifth of all such moneys so received shall be devoted to the use of the school of mines and metallurgy, a department of the university; provided, further, that if the net amount deposited in any one year by the state treasurer under the provisions of this act, to the credit of the "state seminary moneys" be not equivalent to one-tenth of one mill upon every dollar of the assessed valuation of taxable property of this state for the said year, it shall be the duty of the state treasurer to make good this deficiency out of the first moneys received under the provisions of this article in the next succeeding year; provided, further, that all said moneys shall be disbursed in pursuance of regular appropriations of the general assembly, in accordance with the provisions of section five thousand six hundred and ninety-one (5691) of the Revised Statutes of 1889. (Rev. Stats. 1899, sec. 302; Amended Laws 1901, p. 43; Ann. Stats. 1906, p. 448.)

**§ 808. Revenue to be Known as "Educational Fund."**

Sec. 303. The moneys received by the state treasurer under the provisions of this article which shall exceed in any one year the amount required by section 302 of this article to be deposited to the credit of the "state seminary moneys," shall be deposited in the state treasury to the credit of a fund to be known as the "educational fund," which is hereby created and estab-

lished. The moneys deposited in the said fund shall be appropriated by the general assembly for public educational purposes. (Rev. Stats. 1899, sec. 303; Ann. Stats. 1906, p. 449.)

**§ 809. Payment of Tax on Reversions, Remainders and Expectancies.**

Sec. 304. When any grant, gift, legacy or inheritance upon which a tax is imposed by section 299 of this article, shall be a remainder, reversion or other expectancy, real or personal, the tax on such estate shall not be payable, nor interest begin to run thereon, until the person or persons liable for the same shall come into actual possession of such estate, by the termination of the estate for life or years, and the tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner as aforesaid; provided, that in all such cases the tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid; provided, further, that the person or persons, or body politic or corporate beneficially interested in the property as aforesaid shall make a full, verified return of said property to the probate judge of the proper county and file the same in his office within one year from the death of the decedent, and within that period give a bond in form and to the effect prescribed in section 300 of this article, conditioned for the payment of said tax at such time or period as the right of possession shall accrue to the owner or the representatives of said owner as aforesaid, and in case of failure so to do, the tax shall be immediately payable and collectible on the clear market value of the estate, to be determined as hereinafter provided; provided, further, that the owner shall have the right to pay the tax at any time prior to his or her coming into possession, and in such cases, the tax shall be assessed in the manner hereinafter provided, on the value of the estate at the time of the payment of the tax, after deducting the value of the life estate or estates for years. (Rev. Stats. 1899, sec. 304; Ann. Stats. 1906, p. 449.)

**§ 810. Requests to Executors in Lieu of Commissions.**

Sec. 305. Where a testator bequeaths or devises property to one or more executors or trustees in lieu of their commissions or allowances, which property otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequests, devises or residuary legacies exceed what would be a fair compensation for their services, such excess shall be subject to the payment of the said tax; the rate of compensation to be fixed by the probate court having jurisdiction in the case. (Rev. Stats. 1899, sec. 305; Ann. Stats. 1906, p. 450.)

**§ 811. Collection of Tax by Executor.**

Sec. 306. Any administrator, executor or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the amount of the tax therefrom, or if the legacy or property be not money, he shall demand payment of the amount of the tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or

property subject to tax until he shall have collected the tax thereon; and in case of neglect or refusal on the part of said legatee or person to pay the same, such specific legacy or property, or so much thereof as shall be necessary, shall be sold by such administrator, executor or trustee at public sale, after notice to such legatee or person, and the balance that may be left in the hands of the administrator, executor or trustee, after deducting the amount of the said tax, shall be distributed, as is or may be directed by law; and whenever any such legacy or property shall be charged upon or payable out of real estate, the heir or devisee before paying the same, shall deduct the amount of the said tax therefrom, and pay the amount so deducted to the executor or other trustee, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor or other trustee in the same manner that the payment of such legacy or property might be enforced, or by the prosecuting attorney of the proper county as provided in section 319 of this article. (Rev. Stats. 1899, sec. 306; Ann. Stats. 1906, p. 450.)

**§ 812. Payment of Tax on Gift for a Limited Period.**

Sec. 307. If the legacy or property subject to the tax imposed by this article be given in money to any person for a limited period, the executor or other trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him, to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatee or person, and for such further action relative thereto as the case may require. (Rev. Stats. 1899, sec. 307; Ann. Stats. 1906, p. 450.)

**§ 813. Payment by Executor to Collector of Revenue—Receipts.**

Sec. 308. Every sum of money retained by an executor, administrator or other trustee, or paid into his hands, for any tax imposed by this article on any property, shall be paid by him within thirty days thereafter, to the collector of revenue of the county in which the probate court, having jurisdiction of the estate or accounts, is situated, and the said collector shall give, and every executor, administrator or other trustee shall take duplicate receipts from him of such payment, one of which receipts he shall immediately send to the state treasurer, whose duty it shall be to charge the collector so receiving the tax, with the amount thereof, and shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or other trustee, whereupon it shall be a proper voucher in the settlement of his accounts, but an executor, administrator or other trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, unless he shall produce a receipt so sealed and countersigned by the state treasurer, or a copy thereof certified by him. (Rev. Stats. 1899, sec. 308; Ann. Stats., 1906, p. 450.)

**§ 814. Refund of Tax.**

Sec. 309. Whenever any debts shall be proven against the estate of a decedent, after the payment of legacies or distribution of property from

which the said tax has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the tax so paid shall be repaid to him by the executor, administrator or other trustee, if the said tax has not been paid to the county collector or by the county collector if the tax has been paid to him. The county collector shall pay such sums, upon the order of the probate judge, out of any money that he has in his possession or shall receive on account of the tax imposed by the provisions of this article. The state auditor shall credit the county collector with all such sums paid by him upon the order of the probate judge. (Rev. Stats. 1899, sec. 309; Ann. Stats. 1906, p. 451.)

**§ 815. Executor to Notify Probate Judge of Taxable Transfers.**

Sec. 310. Whenever any of the real estate of which any decedent may die seised shall be subject to the tax provided by this article, it shall be the duty of the executors, administrators or other trustees to give information thereof in writing to the probate judge of the court having jurisdiction of the estate of the decedent, within six months after they undertake the execution of their expected duties, or if the fact be not known to them within that period, within one month after the same shall have come to their knowledge, and it shall be the duty of the owners of such estate, immediately upon the vesting of the estate, to give information thereof, in writing, to the probate judge aforesaid. (Rev. Stats. 1899, sec. 310; Ann. Stats. 1906, p. 451.)

**§ 816. Transfer of Stock or Loans by Foreign Executor.**

Sec. 311. Whenever any foreign executor, administrator or other trustee shall assign or transfer any stocks or loans in this state, stating [standing] in the name of a decedent, or in trust for a decedent, which shall be liable for the tax imposed by the provisions of this article, such tax shall be paid, on the transfer thereof, to the collector of the county where the transfer is made; otherwise the corporation permitting such transfer shall become liable to pay such tax: Provided, that such corporation had knowledge before such transfer that said stocks or loans were liable for such tax. (Rev. Stats. 1899, sec. 311; Ann. Stats. 1906, p. 451.)

**§ 817. Appraisers and Appraisement.**

Sec. 312. The probate judge of the court having jurisdiction of the estate of the decedent, upon the application of any interested party, including county collectors, or upon his own motion, shall, as often and whenever occasion may require, appoint a competent person as appraiser, to fix the valuation of estates which shall be subject to the payment of any tax imposed by this article. Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the county collector of revenue, and to such persons as the probate judge may by order direct, of the time and place when he will appraise such estate or property. He shall at such time and place appraise the same at its clear market value, at

the time of the death of the decedent, excluding therefrom an amount equivalent to the sum of all of the lawful debts of the decedent, and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value, in writing, to the said probate judge, together with the depositions of the witnesses examined, and such other facts in relation thereto, and to the said matter as said probate judge may order or require. Every appraiser shall be paid, on the certificate of the probate judge, at the rate of three dollars per day for every day actually and necessarily employed in such appraisal, and his actual and necessary traveling expenses, and the fees paid such witnesses, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record, by the county collector out of any funds he may have in his hands on account of any tax imposed under the provisions of this article. (Rev. Stats. 1899, sec. 312; Ann. Stats. 1906, p. 452.)

**§ 818. Determination of Value of Estate and Assessment of Tax.**

Sec. 313. The report of the appraiser shall be filed in the office of the probate judge, and from such report and other proof relating to any such estate before the probate judge, the probate judge shall forthwith assess and fix the cash value of all estates and the amount of tax to which the same are liable; or, the probate judge may so determine the cash value of all such estates and the amount of the tax to which the same are liable without appointing an appraiser. The value of every limited estate, income, interest or annuity dependent upon any life or lives in being shall be determined by the rule, method and standards of mortality and value, which are employed by the superintendent of the insurance department in ascertaining the value of policies of life insurance and annuities, save that the rate of interest for computing the value of such estates or interest shall be five per centum per annum; and the superintendent of the insurance department shall, on the application of any probate judge, determine the value of such limited estates or interests upon the facts contained in such report, and certify the same to the probate judge, and his certificate shall be conclusive evidence that the method of computations adopted therein is correct. Any person dissatisfied with the appraisement or assessment and determination of tax, may appeal therefrom to the probate judge within sixty days from the fixing, assessing and determination of the tax by the probate judge as herein provided, upon filing in the office of the probate judge a written notice of appeal, which shall state the grounds upon which the appeal is taken and on paying or giving security, approved by the probate judge, to pay all costs of the proceeding. The probate judge shall immediately give notice, upon the determination by him as to the value of any estate which is taxable under this article and of the tax to which it is liable to all persons known to be interested therein. (Rev. Stats. 1899, sec. 313; Ann. Stats. 1906, p. 452.)

**§ 313. Reappraisement.**

Sec. 314. Within two years after the entry of an order or decree of a probate judge determining the value of an estate and assessing the tax thereon, the state auditor may, if he believe that such appraisal, assessment or determination has been fraudulently, collusively or erroneously made, make application to the circuit judge of the judicial circuit in which the former owner of such estate resided for a reappraisal thereof. The judge to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers, be subject to the duties and receive the compensation provided by sections 312 and 314 of this article. Such compensation shall be payable by the county collector of revenue out of any funds he may have on account of any tax imposed under the provisions of this article, upon the certificate of the judge appointing him. The report of such appraiser shall be filed with the judge by whom he was appointed, and thereafter the same proceedings shall be taken and had by and before such judge as are herein provided to be taken and had by and before the judge of the probate court. The determination and assessment of such judge of the circuit court shall supersede the determination of the probate judge, and shall be filed by such circuit judge in the office of the state auditor. (Rev. Stats. 1899, sec. 314; Ann. Stats. 1906, p. 453.)

**§ 320. Appraiser Taking Illegal Fees—Penalty.**

Sec. 315. Any appraiser appointed by virtue of this article, who shall take any fee or reward from any executor, administrator, trustee, legatee, next to (of) kin, or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors he shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars, and imprisoned not exceeding ninety days, and in addition thereto the probate judge shall dismiss him from such service and he shall be disqualified from serving hereafter as an appraiser. (Rev. Stats. 1899, sec. 315; Ann. Stats. 1906, p. 453.)

**§ 321. Jurisdiction of Probate Court—Prosecuting Attorney to Represent State.**

Sec. 316. The court of probate, having either principal or auxiliary jurisdiction of the settlement of the estate of the decedent, shall have jurisdiction to hear and determine all questions in relation to said tax that may arise, affecting any devise, legacy or inheritance under this article, subject to appeal as in other cases, and the prosecuting attorney of the proper county shall represent the interests of the state in any such proceedings; provided, that in any such proceedings carried on appeal to either of the courts of appeal or the supreme court the attorney general shall represent the interest of the state. (Rev. Stats. 1899, sec. 316; Ann. Stats. 1906, p. 454.)

**§ 322. Records to be Kept by Probate Judge.**

Sec. 317. The state auditor shall furnish to each probate judge a book, which shall be a public record, and in which he shall enter the name of

every decedent upon whose estate an application to him has been made for the issue of letters of administration or letters testamentary, the date and place of death of such decedent, the estimated value of his real and personal property, the names, places, residences and relationship to him of his heirs at law, the names and places of residence of the legatees and devisees in any will of any such decedent, the amount of each legacy and the estimated value of any real property devised therein, and to whom devised. These entries shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of decedent. The probate judge shall also enter in such book the amount of the personal property of any decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by any appraiser appointed by him under this article, and the value of annuities, life estates, terms of years and other property of any such decedent or given by him in his will or otherwise, as fixed by the probate judge, and the tax assessed thereon, and the amount of any receipts for payment of any tax on the estate of such decedent under this article filed with him. The state auditor shall also furnish to each probate judge forms for the reports to be made by such probate judge, which shall correspond with the entries to be made in such book. (Rev. Stats. 1899, sec. 317; Ann. Stats. 1906, p. 454.)

**§ 823. Reports to be Made by Probate Judge and County Recorder.**

Sec. 318. Each probate judge shall, on January, April, July and October first of each year, make a report, in duplicate, upon the forms furnished by the state auditor, containing all the data and matters required to be entered in the book aforesaid, one of which shall be immediately delivered to the county collector of revenue and the other transmitted to the state auditor. The recorder of each county shall at the same time make reports in duplicates, containing a statement of any deed or other conveyance filed or recorded in his office of any property, which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor, the name and place of residence of such grantor or vendor, the name and place of residence of the grantee or vendee, and a description of the property transferred, one of which duplicates shall be immediately delivered to the county collector of revenue and the other transmitted to the state auditor. (Rev. Stats. 1899, sec. 318; Ann. Stats. 1906, p. 454.)

**§ 824. Notice to Collector of Unpaid Tax—Proceedings for Collection.**

Sec. 319. If the collector of revenue of any county shall have reason to believe that any tax is due and unpaid under this article, after the refusal or neglect of the persons liable therefor to pay the same, he shall notify the prosecuting attorney of the county, in writing, of such failure or neglect, and such prosecuting attorney, if he have probable cause to believe that such tax is due and unpaid, shall apply to the probate court for a citation, citing the persons liable to pay such tax to appear before the court on the day specified, not more than three months after the date of such citation, and show cause why the tax should not be paid. The probate judge, upon such application, and whenever it shall appear to him that any such tax



accruing under this article has not been paid as required by law, shall issue such citation, and the service of such citation, and the hearing and determination thereon and the enforcement of the determination of decree made by the probate judge and the fees and costs in such cases shall be the same as those now provided, or which may hereafter be provided, in cases in the probate courts of this state, and the probate judge shall allow as costs in the said case such fees to said prosecuting attorney as he may deem reasonable. Whenever the probate judge shall certify that there was probable cause for issuing a citation and taking the proceedings specified in this section, the state auditor shall credit the collector of the county with all expenses incurred for the service of citations and other lawful disbursements. In proceedings to which any county collector is cited as a party under section 312 of this article, the state auditor is authorized, in his discretion, to designate and retain counsel to represent such county collector therein, and to direct such county collector to pay the expenses thereby incurred out of the funds which may be in his hands on account of this tax. (Rev. Stats. 1899, sec. 319; Ann. Stats. 1906, p. 455.)

#### **§ 825. Receipts for Payment of Tax.**

Sec. 320. Any person shall, upon payment of the sum of twenty-five cents, be entitled to a receipt from the county collector of any county, or at his option, to a copy of a receipt that may have been given by such collector for the payment of any tax under this article, under the official seal of said collector, which receipt shall designate on what real property, if any, of which any decedent may have died seised, such tax shall have been paid, by whom paid, and whether in full of said tax, and said receipt may be recorded in the recorder's office in which said property is situate, in a book to be kept by said recorder for such purpose, which shall be labeled "inheritance tax." (Rev. Stats. 1899, sec. 320; Ann. Stats. 1906, p. 455.)

#### **§ 826. Commissions for Collecting Tax.**

Sec. 321. The collector of each county shall be allowed to retain, on all taxes paid and accounted for by him in each year, under this article, in addition to his salary or fees now allowed by law, five per centum on the first twenty thousand dollars so paid and accounted for by him, and three per centum on all additional sums so paid and accounted for by him; provided, that said collector shall, every three months, pay one-half of all the sums so retained by him, during such period, to the probate judge of the said county for the use of said probate judge, except in cities containing three hundred thousand inhabitants and over in which event the collector shall retain four-fifths thereof and pay the probate judge one-fifth of such sums and to defray the clerical expense arising in the office of said probate judge in connection with proceedings under this article. (Rev. Stats. 1899, sec. 321; Amended Laws 1903, p. 52; Ann. Stats. 1906, p. 456.)

#### **§ 827. Repeal of Inconsistent Statutes.**

Sec. 322. All statutes, acts or parts of acts inconsistent with this act are hereby repealed. (Rev. Stats. 1899, sec. 322; Ann. Stats. 1906, p. 456.)

## CHAPTER XL.

### MONTANA STATUTE.

*(Revised Codes of 1907, secs. 7724-7751.)*

- § 828. Transfers Subject to Tax—Rate of Taxation—Exemptions.
- § 829. Appraisement of Contingent or Determinable Estates.
- § 830. Bequest to Executor in Lieu of Compensation.
- § 831. Time for Payment of Tax—Interest and Discount.
- § 832. Penalty for Nonpayment.
- § 833. Collection of Tax by Executor.
- § 834. Sale of Property to Pay Tax.
- § 835. Payment to County Treasurer—Receipts.
- § 836. Liability on Executor's Bond.
- § 837. Proceedings upon Failure of Executor to Pay Tax.
- § 838. Administrator De Bonis Non.
- § 839. Refund in Case of Debts Proved After Distribution.
- § 840. Refund in Case of Erroneous Payment.
- § 841. Transfer of Stocks or Loans by Foreign Executor.
- § 842. Appraisers and Appraisement.
- § 843. Appraiser Taking More Than Regular Fees—Penalty.
- § 844. Jurisdiction of Courts.
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- § 846. Proceedings upon Failure to Administer Estates.
- § 847. Action to Enforce Tax.
- § 848. Statement by Clerk of Delinquent Taxes.
- § 849. Costs of Collection.
- § 850. Record to be Kept by Clerk.
- § 851. Duties of County Treasurer.
- § 852. Receipts for Payment of Tax—Records.
- § 853. Purposes to Which Taxes Shall be Devoted.
- § 854. Repeal of Inconsistent Acts.
- § 855. Time When Statute Takes Effect.

#### § 828. Transfers Subject to Tax—Rate of Taxation—Exemptions.

Sec. 7724. After the passage of this act, all property which shall pass by will or by the intestate laws of this state, from any person who may die, seised or possessed of the same, while a resident of this state, or if such decedent was not a resident of this state, at the time of his death, which property or any part thereof, shall be within this state, or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor, or intended to take effect in possession or enjoyment after such death to any person or persons, or to any body politic corporate, in trust or otherwise, or any property, which shall be in this state or the proceeds of all property outside of this state, which may come into this state, and which may be or should be

distributed in this state to any such heirs, devisees or legatees, by reason whereof any person or corporation shall become beneficially entitled in possession or expectancy, to any such property, or to the income thereof, other than to or for the use of his or her lawful issue, brother, sister, the wife or widow of the son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the state of Montana, and any lineal descendant of such decedent born in lawful wedlock, shall be and is subject to a tax of five dollars on every hundred dollars of the market value of such property, and at a proportionate rate for any less amount, to be paid to the treasurer of the proper county hereinafter defined for the use of said county and state in the proportions hereafter stated; and all administrators, executors and trustees shall be liable for any and all such taxes until the same have been paid as hereinafter directed. When the beneficial interests to any personal property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the state of Montana, or to any person to whom the deceased, for not less than ten years prior to death, stood in mutually acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock; in every such case the rate of tax shall be one dollar on every hundred dollars of the clear market value of such property, and at and after the same rate for every less amount, provided, that an estate which may be valued at a less sum than seventy-five hundred dollars shall not be subject to any such tax or duty. In all other cases the rate shall be five dollars on each and every hundred dollars of the clear market value of all property and at the same rate for any amount, provided, that an estate which may be valued at a less sum than five hundred dollars shall not be subject to any such duties or tax, provided, further, that said tax shall be levied and collected upon the increase of all property arising between the date of death and the date of the decree of distribution, and upon all estates which have been probated before, and shall be distributed after the passage and taking effect of this act. (Rev. Codes 1907, sec. 7724.)

**§ 829. Appraisement of Contingent or Determinable Estates.**

Sec. 7725. When any grant, gift, legacy or succession upon which a tax is imposed by section 7724 (1) of this act, shall be an estate, income or interest for a term of years, or for life, or determinable upon any future or contingent event, or shall be a remainder, or reversion or other expectancy, real or personal, the entire property or fund by which such estate, income or interest is supported, or which is a part, shall be appraised immediately after death of the deceased, and the market value thereof determined, in the manner provided in section 7738 (15) of this act, and the tax prescribed by this act shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid; provided, that the person or persons, or body politic or corporate, beneficially interested in the property chargeable with said tax, may elect not to pay the same

until they shall come into the actual possession or enjoyment of such property, and in that case, such person or persons or body politic or corporate shall execute a bond to the state of Montana in a penalty of twice the amount of tax, including interest at ten per cent per annum, arising upon the personal estate, with such sureties as the clerk of the district court of the proper county may approve, conditioned for the payment of said tax, and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the clerk of the district court of the proper county; provided further, that such person or corporation shall make a full and verified return of such property to said court, and file the same in the office of the clerk of the district court for said county and a duplicate thereof in the office of the clerk and recorder of said county within one year from the death of the deceased, and within that period enter into such security and bond, and renew the same every three years. (Rev. Code 1907, sec. 7725.)

**§ 830. Bequest to Executor in Lieu of Compensation.**

Sec. 7726. Whenever a decedent appoints or names one or more executors or trustees, and makes a bequest or devise of property to them in lieu of commissions or allowances, which otherwise would be liable to said tax or appoints them his residuary legatees, and said bequests, devises or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to said tax; and the district court in which the probate proceedings are pending shall fix the compensation. (Rev. Code 1907, sec. 7726.)

**§ 831. Time for Payment of Tax—Interest and Discount.**

Sec. 7727. All taxes imposed by this act, unless otherwise herein provided for shall be due and payable at the death of the decedent, and if the same are paid within ten months, no interest shall be charged and collected thereon, but if not so paid, interest at the rate of ten per centum per annum shall be charged and collected from the time said tax accrues; provided, that if said tax is paid within six months from the accruing thereof a discount of three per centum shall be allowed and deducted from said tax. And in all cases where the executors, administrators or trustees do not pay such tax within ten months from the death of the decedent, they shall be required to give bond in the form and to the effect prescribed in section 7725 (2) of this act for the payment of said tax with interest. (Rev. Code 1907, sec. 7727.)

**§ 832. Penalty for Nonpayment.**

Sec. 7728. The penalty of ten per centum imposed by section 7727 (4) hereof for nonpayment of said tax thereof, shall not be charged in where, by reason of claims made upon the estate, necessary litigation or other unavoidable causes of delay, the estate of any decedent or a part thereof cannot be settled at the end of eighteen months from the death of the decedent; and in such cases only seven per centum shall be charged upon said

tax from the expiration of said eighteen months until the cause of delay is removed. (Rev. Code 1907, sec. 7728.)

**§ 833. Collection of Tax by Executor.**

Sec. 7729. Any administrator, executor or trustee having in charge or trust, any legacy, or property for distribution subject to said tax, shall deduct the tax therefrom, or if the legacy or property be not money, he shall collect the tax thereon upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon, and whenever any such legacy shall be charged upon or payable out of the real estate, the executor, administrator, or trustee shall collect said tax therefrom, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money, to any person for a limited period, the executor, administrator, or trustee shall retain the tax on the whole amount. But if it be not in money, he shall make application to the district court of the proper county to make an apportionment, if the case require it, of the same to be paid into his hands by such legatee or legatees and for such other order relative thereto as the case may require. (Rev. Code 1907, sec. 7729.)

**§ 834. Sale of Property to Pay Tax.**

Sec. 7730. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as shall enable them to pay said tax in the same manner as they may be enabled by law to do for the payment of debts of the estate, and the amount of said tax shall be paid as hereinafter directed. (Rev. Code 1907, sec. 7730.)

**§ 835. Payment to County Treasurer—Receipts.**

Sec. 7731. Every sum of money retained by an executor, administrator, or trustee, or paid into his hands, for any tax on property, shall be paid by him within ten days thereafter to the treasurer of the county in which the probate proceedings are pending, and the said treasurer shall give, and every executor, administrator or trustee shall take duplicate receipt for such payment, one of which said receipts said executor, administrator, or trustee shall immediately send to the treasurer of the state whose duty it shall be to charge the county treasurer so receiving the tax with the amount thereof due the state and said state treasurer shall seal said receipt with the seal of his office, if he have one, and countersign the same, and return it to the executor, administrator, or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; and an executor, administrator or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed unless he shall produce a receipt so sealed and countersigned by the state treasurer or a copy thereof certified by him. (Rev. Code 1907, sec. 7731.)

**§ 836. Liability on Executor's Bond.**

Sec. 7732. The bond of an executor or administrator shall be liable for all moneys he may receive under this article of taxes, or for proceeds of sale of

real estate received by him thereunder, or pursuant thereto. (Rev. Code 1907, sec. 7732.)

**§ 837. Proceedings upon Failure of Executor to Pay Tax.**

Sec. 7733. If any executor or administrator or trustee shall fail to perform the duties imposed upon him by this article the district court upon petition of the county treasurer, or any person interested in said estate may revoke his administration and his bond shall be liable, and the same proceedings shall be had against him as if his administration had been revoked for any other cause. (Rev. Code 1907, sec. 7733.)

**§ 838. Administrator De Bonis Non.**

Sec. 7734. The power and duty of an administrator de bonis non, or with the will annexed, or the public administrator shall be the same under this article as those of an executor or administrator, and he shall be subject to the same duties and liabilities. (Rev. Code 1907, sec. 7734.)

**§ 839. Refund in Case of Debts Proved After Distribution.**

Sec. 7735. Whenever any debts shall be proven against the estate of the deceased, after the payment of legacies, or distribution of property from which the said tax has been deducted or upon which it has been paid, and a refund is made by the legatee, devisee, heir, or next of kin, a proportion of the tax so deducted or paid shall be repaid to him by the executor, administrator or trustee, if the said tax has not been paid to the county treasurer or state treasurer, or by them, in the proper proportionate shares, if it has been so paid. (Rev. Code 1907, sec. 7735.)

**§ 840. Refund in Case of Erroneous Payment.**

Sec. 7736. When any amount of said tax shall have been paid erroneously to the county and state treasurer, or to either of them, it shall be lawful for them, on satisfactory proof rendered to the clerk of the district court, in the case of the county treasurer and to the state auditor in the case of the state treasurer, of such erroneous payment, to refund and pay to the executor, administrator, person or persons who have paid any such tax in error, the county's and state's proportionate amount of such tax so paid provided that all such applications for repayment of such tax shall be made within two years from the date of such payment. (Rev. Code 1907, sec. 7736.)

**§ 841. Transfer of Stocks or Loans by Foreign Executor.**

Sec. 7737. Whenever any foreign executor, or administrator shall assign or transfer any stocks or loans in this state, standing in the name of the decedent, or held in trust for a decedent, which shall be liable to the said tax, such tax shall be paid to the treasurer of the proper county on the transfer thereof; otherwise, the corporation permitting such transfer shall become liable to pay such tax; provided that such corporation had actual or constructive knowledge before such transfer that said stocks or loans are liable to said tax. (Rev. Code 1907, sec. 7737.)

**§ 842. Appraisers and Appraisement.**

Sec. 7738. When the value of an inheritance, devise, bequest, or other interest subject to the payment of said tax is uncertain, the district court in which the probate proceedings are pending, or the judge thereof on his own motion, or on the application of any interested party shall appoint some competent person as appraiser, as often as, and whenever occasion may require, whose duty it shall be forthwith to give such notice, by registered mail, to all persons known to have or claim any interest in such property, and to such persons as the court may direct, of the time and place at which he will appraise such property, and at such time and place to appraise the same, and to make the report thereof, in writing, to said court, together with such other facts in relation thereto, as said court may by order require, to be filed with the clerk of such court; and from this report the said court, shall by order, forthwith assess and fix the market value of all inheritances, devises, bequests, or other interests, and the tax to which the same is liable, and shall immediately cause notice thereof to be given, by registered mail, to all persons known to be interested therein; and the value of every future or contingent, or limited estate, income, or interest, shall for the purpose of this act, be determined by the rule, method and standards of mortality, and of values that are set forth in the actuaries' combined experience tables of mortality for ascertaining the values of policies of life insurance and annuities, and for the determination of the liabilities of life insurance companies, save that the rate of interest be assessed in computing the present value of all future interest and contingencies shall be at seven per cent per annum; and the value of such future, or contingent, or limited estate, income, or interest, shall be determined in the usual manner upon the facts contained in such report, and shall be certified to the court, which said certificate shall be made by some one known to the court to be familiar with the method of procedure by companies, and his certificate, verified by oath shall be prima facie evidence that the method of computation adopted therein is correct. The said appraiser shall be paid by the county treasurer out of any funds that he may have in his hands on account of said tax, and the certificate of the court, at the rate of five dollars per day for every day actually and necessarily employed in said appraisement, together with the actual and necessary traveling expenses, a sworn statement of which must be filed with the clerk of the district court in which the probate proceedings are pending. The person designated by the court or judge thereof, to make the computations, in this section required, shall receive such compensation as the court or judge thereof shall deem reasonable and just. (Rev. Code 1907, sec. 7738.)

**§ 843. Appraiser Taking More Than Regular Fees—Penalty.**

Sec. 7739. Any appraiser appointed by virtue of this act, who shall take any fee or reward from an executor, administrator, trustee, legatee, next of kin, or heir of any decedent or from any other person liable to pay said tax, or his or their attorney, or any other person, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined

not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail ninety days, or both such fine and imprisonment, and in addition thereto, the court shall dismiss him from such service. The district courts shall have concurrent jurisdiction with the justices of the peace courts for all violations of the law mentioned in this section. (Rev. Code 1907, sec. 7739.)

#### § 844. Jurisdiction of Courts.

Sec. 7740. The district court of the county in which is situate the real property of the decedent, who was not a resident of this state, or in the county in which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other. (Rev. Code 1907, sec. 7740.)

#### § 845. Citation to Compel Payment.

Sec. 7741. If it shall appear to the district court, or judge thereof, that any tax accruing under this act has not been paid according to law, the court or judge shall issue a citation, citing the person known to own any interest or part of the property liable to the tax to appear before the court, on a day certain, not more than ten weeks from the date of said citation, and show cause why said tax should not be paid. The service of such citation and the time, manner, and proof thereof, and the hearing and determination thereof, and the enforcement of the determination or decree shall conform to the provisions of chapter XII, of title XII of the Code of Civil Procedure; and the clerk of the court shall upon the request of the county attorney or county treasurer furnish without fee, one or more transcripts of such decree, and the same shall be docketed and filed in the office of the county clerk and recorder of any county in the state, and in the office of the clerk of the district court of any county in the state, in the same manner and with the same effect as provided by section 6807 (1197) of the said Code of Civil Procedure for filing transcript of judgment, or of an original docket. (Rev. Code 1907, sec. 7741.)

#### § 846. Proceedings upon Failure to Administer Estates.

Sec. 7742. In all cases where any estate, real, personal or mixed, shall be subject to the direct or collateral inheritance tax imposed by this act, and no administration is taken on the estate of the person who died seised and possessed thereof, within ninety days after the death of said person, the clerk of the district court of the county in which administration should be granted, or taken out, shall issue a citation for the parties entitled to administration, to show cause wherefore they do not administer; provided, however, that when any real estate shall be subject to said tax and no administration has been taken out on the estate of the person who died seised thereof, the district court of the county where said real estate shall be situate, may on the application of anyone interested in said real estate, or of the county or state treasurer appoint an appraiser to value the same,



as provided in this act, and the amount of the tax which may be found due on said property shall be paid to the county treasurer and disposed of the same as other taxes provided for in this act. (Rev. Code 1907, sec. 7742.)

**§ 847. Action to Enforce Tax.**

Sec. 7743. Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the persons interested in the property liable to said tax, to pay the same, he shall notify the county attorney of the proper county, in writing, of such failure to pay such tax, and the county attorney so notified, if there is a probable cause to believe a tax is due and unpaid, shall prosecute the proceedings in the district court of the proper county, as provided in sections 7741 (18) and 7742 (19) of this act, for the enforcement and collection of such tax. (Rev. Code 1907, sec. 7743.)

**§ 848. Statement by Clerk of Delinquent Taxes.**

Sec. 7744. The clerk of the district court shall, every three months, make a statement in writing, to the county treasurer, of the property from which, or the party from which, he has reason to believe, or knows, a tax under this act, is due and unpaid. (Rev. Code 1907, sec. 7744.)

**§ 849. Costs of Collection.**

Sec. 7745. Whenever the district court of any county or the judge thereof shall certify that there is probable cause for issuing a citation, and taking the proceedings specified in section 7741 (18) of this act, to the state auditor, the state auditor shall allow said claim, and shall draw his warrant on the state treasurer in favor of the county treasurer of the county wherein said proceedings were taken or had for all expenses incurred for services of said citation, and his other lawful expenses that have not otherwise been paid; provided that if it shall appear to the district court that the party to whom the citation is issued was willfully endeavoring to evade the terms and provisions of this act, and the payment of the tax hereunder, the costs of said proceeding shall be taxed to him and execution shall issue therefor in the same manner as on judgments in the district court. (Rev. Code 1907, sec. 7745.)

**§ 850. Record to be Kept by Clerk.**

Sec. 7746. The clerk of the district court of each county shall keep a book in which he shall enter the value of inheritances, devises, bequests, and other interests subject to the payment of said tax, and the tax assessed thereon, and the amounts of any receipts for the payments thereon filed with him, which book shall be kept by him as public records. (Rev. Code 1907, sec. 7746.)

**§ 851. Duties of County Treasurer.**

Sec. 7747. The treasurer of each county shall collect all taxes that may be due and payable under this act, and he shall pay to the state sixty per cent thereof, and the state treasurer shall give him a receipt therefor. The

county treasurer shall make a report under oath to the state auditor between the first and fifteenth days of December of each year of said tax so paid, stating for what estate paid, and in such form and containing such particulars as the auditor may prescribe; and for all such taxes collected by him and not paid to the state treasurer by the first day of June and January of each year he shall be liable upon his official bond. (Rev. Code 1907, sec. 7747.)

**§ 852. Receipts for Payment of Tax—Records.**

Sec. 7748. Any person or body politic, or corporate, shall, upon the payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county, or a copy of the receipt at his option, that may have been given by said treasurer for the payment of any tax under this act, which said receipt shall be countersigned by the clerk of the district court and the seal of the district court attached thereto, and shall designate on what real property, if any, of which decedent may have died seised, said tax has been paid, and by whom paid, and whether or not it is in full of said tax, and the description of the property upon which said tax is paid; and the said receipt may be recorded in the office of the county clerk and recorder of the county in which said property is situate, in a book to be kept by said clerk for such purpose, which shall be properly indexed and labeled "District and Collateral Tax." (Rev. Code 1907, sec. 7748.)

**§ 853. Purposes to Which Tax shall be Devoted.**

Sec. 7749. Sixty per cent of the taxes levied and collected under this act, shall be paid into the treasury of this state for the use of the general fund, and forty per cent thereof into the treasury of the county for the use of the general school fund. (Rev. Code 1907, sec. 7749.)

**§ 854. Repeal of Inconsistent Acts.**

Sec. 7750. All acts and parts of acts inconsistent with the provisions of this act, are hereby repealed, as far as they affect the provisions hereof. (Rev. Code 1907, sec. 7750.)

**§ 855. Time When Statute Takes Effect.**

Sec. 7751. This act shall apply to all estates remaining undistributed at the time this law shall take effect, and the tax shall be determined and collected as in other cases, and it shall take effect and be in force from and after its passage and approval by the governor. (Rev. Code 1907, sec. 7751.)

## CHAPTER XLI.

### NEBRASKA STATUTE.

*(Compiled Statutes of 1905, secs. 5176-5196; Compiled Statutes of 1911, pp. 1646-1652.)*

- § 856. Transfers Subject to Tax—Rate of Taxation—Value of Property—Exemptions.
- § 857. Estates for Years or for Life and Remainders.
- § 858. Time for Payment—Interest—Bond.
- § 859. Collection of Tax by Executor.
- § 860. Sale of Property to Pay Tax.
- § 861. Payment by Executor to County Treasurer—Receipts.
- § 862. Information to County Treasurer of Taxable Transfers.
- § 863. Refunding Tax When Debts Proved After Distribution.
- § 864. Transfer of Stocks or Loans by Foreign Executor.
- § 865. Refund of Tax Erroneously Paid.
- § 866. Appraisers and Appraisement.
- § 867. Appraiser Receiving More Than Legal Fees—Penalty.
- § 868. Jurisdiction of County Court.
- § 869. Proceedings to Enforce Tax.
- § 870. Notice to County Attorney of Refusal to Pay Tax.
- § 871. Statement of County Judge and Clerk of Taxable Transfers.
- § 872. Repealed.
- § 873. Book and Records to be Kept by County Judge.
- § 874. Disposition to be Made of Revenue.
- § 875. Receipts for Payment of Tax.
- § 876. Lien of Tax.

#### § 856. Transfers Subject to Tax—Rate of Taxation—Value of Property—Exemptions.

Sec. 1. All property, real, personal and mixed which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while a resident of this state, or, if decedent was not a resident of this state at the time of his death, which property or any part thereof shall be within this state, or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor, or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason thereof any person or body corporate shall become beneficiary [beneficially] entitled in possession or expectation to any property or income thereof, shall be and is subject to a tax, at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the state, and all heirs, legatees, and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. When the beneficial interest to any property or

income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son, or husband of the daughter, or any child or children adopted as such in conformity with the laws of the state of Nebraska, or to any person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, in every such case the rate of tax shall be one dollar on every one hundred dollars of the clear market value of such property received by each person, and at the same rate for every less amount; provided, that any estate which may be valued at a less sum than ten thousand dollars shall not be subject to any such duty or the taxes, and the taxes to be levied in the above case only upon the excess of ten thousand dollars received by each person; when the beneficial interests to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece, nephew, or other lineal descendant of the same, in every such case the rate of such tax shall be two dollars on every one hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person; in all other cases the rate shall be as follows: On each and every hundred dollars of the clear market value of all property and at the same rate for any less amount, up to five thousand dollars, two dollars; on all estates of over five thousand dollars and not exceeding ten thousand dollars, three dollars; on all estates of over ten thousand dollars not exceeding twenty thousand dollars, four dollars; on all estates of over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars; and on all estates over fifty thousand dollars, six dollars; provided that an estate in the above case which may be valued at a sum less than five hundred dollars shall not be subject to any duty or tax. (1901, c. 54, Amended 1905, H. R. 90; 1907, S. F. 41; Comp. Stats. 1911, p. 1646.)

**§ 857. Estates for Years or for Life and Remainders.**

Sec. 2. When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother, or sister, the widow of the son, or the lineal descendant, during the life or for a term of years with remainder to the collateral heir of the decedent, or to the stranger in blood or to a body corporate at their decease on the expiration of such term, the said life estate or estates for a term of years shall be subject to the tax prescribed in section 1, and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years, the tax prescribed by this act on the remainder shall be immediately due and payable to the treasurer of the proper county, the interest thereon shall be and remain a lien on said property until the same is paid; provided, that the person or persons or body corporate beneficially interested in the property chargeable with said tax elect not to pay the same until they have come into actual possession or enjoyment of such, in that case such person or persons or body corporate shall give a bond to the state of Nebraska in a penal sum three times the

amount of the tax arising upon such estate, with such sureties as the county judge may approve, conditioned for the payment of said tax at such time or period as they or their representatives may come into the actual possession or enjoyment of said property, which bond shall be filed in the office of the clerk of the proper county; provided, further, that such person shall make a full verified return of said property to said county judge, and file the same in his office within one year from the death of the decedent, and within that period enter into such securities and may renew the same for five years. (Comp. Stats. 1911, p. 1647.)

**§ 858. Time for Payment—Interest—Bond.**

Sec. 3. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and interest at the rate of seven per cent per annum shall be charged and collected therefrom for such time as such taxes are not paid; provided, that if said tax is paid within one year from the accruing thereof, interest shall not be charged or collected thereon, and in all cases where the executors and administrators or trustees do not pay such tax within one year from the death of the decedent they shall be required to give a bond in the form and to the effect prescribed in section two of this act, for the payment of said tax together with interest. (Amended 1911, H. R. 142; Comp. Stats. 1911, p. 1648.)

**§ 859. Collection of Tax by Executor.**

Sec. 4. Any administrator, executor or trustee having any charge or trust in legacies or property for distribution subject to said tax, shall deduct the tax therefrom, or if the legacy or property be not money, he shall collect the tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon, and whenever any such legacy shall be charged upon or payable out of real estate, the heir or devisee before paying the same shall deduct such tax therefrom and pay the same to the executor, administrator or trustee, and the same shall remain a charge upon such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the said payment of said legacies might be enforced; if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money he shall make application to the court having jurisdiction of his accounts to make apportionment if the case requires it of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require. (Comp. Stats. 1911, p. 1648.)

**§ 860. Sale of Property to Pay Tax.**

Sec. 5. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled to do by law, for the

payment of debts of their testators and intestates and the amount of said tax shall be paid as hereinafter directed. (Comp. Stats. 1911, p. 1648.)

**§ 861. Payment by Executor to County Treasurer—Receipts.**

Sec. 6. Every sum of money retained by any executor, administrator or trustee or paid into his hands for any tax on any property, shall be paid by him within thirty days thereafter to the treasurer of the proper county, and the said treasurer or treasurers shall give, and every executor, administrator or trustee shall take a receipt from him of said payment. The words "proper county" shall be taken to mean the county in which the property was situated and subject to taxation at the time of the death of the owner. (Amended 1905, H. R. 90; Comp. Stats. 1911, p. 1648.)

**§ 862. Information to County Treasurer of Taxable Transfers.**

Sec. 7. Whenever any of the real estate of which any decedent may die seised shall pass to any body corporate or to any person or persons or in trust for them or some of them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof, in writing to the treasurer of the county where said real estate is situated within six months after they undertake the execution of their expected duties, or if the facts be not known within that period, then within one month after the same shall have come to their knowledge. (Comp. Stats. 1911, p. 1648.)

**§ 863. Refunding Tax When Debts Proved After Distribution.**

Sec. 8. Whenever debts shall be proved against the estate of the deceased after distribution of legacies from which the inheritance tax had been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of said tax shall be paid to him by the executor or administrator; if the said tax has not been paid into the county treasury or by the county treasurer if it has been so paid. (Amended 1905, H. R. 90; Comp. Stats. 1911, p. 1648.)

**§ 864. Transfer of Stocks or Loans by Foreign Executor.**

Sec. 9. Whenever any foreign executors or administrators shall assign or transfer any stocks or loans in this state standing in the name of the decedent, or in trust for a decedent which shall be liable to the said tax, such tax shall be paid to the treasury or treasurer of the proper county on the transfer thereof; otherwise the corporation making such transfer shall become liable to pay such taxes, provided that such corporation has knowledge before such transfer that said stocks or loans are liable for such taxes. (Comp. Stats. 1911, p. 1649.)

**§ 865. Refund of Tax Erroneously Paid.**

Sec. 10. When any amount of the said tax shall have been paid erroneously to the county treasurer it shall be lawful for him, on satisfactory proof rendered to him of said erroneous payment, to refund and pay to the executor, administrator or trustee, person or persons who have paid any such tax in error, the amount of such tax so paid provided that all applica-

tions for the repayment of the said tax shall be made within two years of the date of said payment. (Amended 1905, H. R. 90; Comp. Stats. 1911, p. 1649.)

**§ 866. Appraisers and Appraisement.**

Sec. 11. In order to fix the value of property of persons whose estate shall be subject to the payment of said tax, the county judge, whenever an estate appears to be subject to the tax provided by this act or upon the application of any interested party, shall appoint some competent person as appraiser as often as, or whenever occasion may require, whose duty it shall be forthwith to give such notice by mail to all persons, and to such persons as the county judge may by order, direct, of the time and place he will appraise such property; and at such time and place to appraise the property at the fair market value, of the same, and for that purpose the appraiser is authorized by leave of the county judge to use subpoenas and to compel the attendance of witnesses before him, and take the evidence of such witnesses under oath concerning such property, and the value thereof, and he shall make a report thereof and of such value in writing to the county judge, with the depositions of the witnesses and such other facts relating thereto, as the county judge may by order require to be filed with the records of the county court, and from this report the county judge shall forthwith determine and fix the then cash value of all estates, annuities, and life estates for terms of years growing out of said estate, and the tax to which the same is liable, and shall give immediate notice through the mails to all parties known to be interested therein. Any person or persons dissatisfied with the appraisement or assessment, may appeal therefrom to the county court, of the proper county within sixty days after the making and filing of such appraisement or assessment, conditioned upon the giving of security to the court to pay all costs, together with all taxes that may be fixed by the court. The said appraisers shall be paid by the county treasurer out of any funds he may have in his hands on account of said tax, on the certificate of the county judge, a reasonable fee to be fixed by the county judge together with legal mileage. Witnesses shall be allowed the sum of two dollars per day for every day's attendance before the appraisers or county court, together with legal mileage. The officer serving process under this act shall receive the same fees and mileage as is now provided by law for similar services, and the county judge for services performed under this act shall receive the same fees as is now provided by law for similar services. All costs made or incurred under this act shall be paid by the county treasurer out of any funds he may have in his hands on account of said tax, on certificate of the county judge. (Amended March 19, 1907; S. F. 21, sec. 2; Comp. Stats. 1911, p. 1649.)

**§ 867. Appraiser Receiving More Than Legal Fees—Penalty.**

Sec. 12. Any appraiser appointed under the authority and by virtue of this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin, or heir or any decedent, or from any person or corporation liable to pay said tax or any portion thereof, shall be guilty of a mis-

demeanor, and upon conviction in any court of competent jurisdiction, he shall be fined not less than one hundred dollars nor more than five hundred dollars, and in addition thereto the county judge shall dismiss him from such service. (Comp. Stats. 1911, p. 1650.)

**§ 868. Jurisdiction of County Court.**

Sec. 13. The county court in the county in which the real property is situated of a decedent who was not a resident of the state, or in the county of which the deceased was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to all taxes arising under this act, and the county court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other. (Comp. Stats. 1911, p. 1650.)

**§ 869. Proceedings to Enforce Tax.**

Sec. 14. If it shall appear to the county court that any tax accruing under this act has not been paid according to law, it shall issue a summons commanding the persons or corporation liable to pay such tax or interested in such property to appear before the court on a certain day not more than three months after the date of such summons, to show cause why such tax should not be paid. The process, practice and pleadings and the hearing and determination thereof, and the judgment in said court in such cases shall be the same as those now provided or those which may be hereafter provided in probate cases in the county courts of this state and the fees and costs in such cases shall be the same as in probate cases in the county courts of this state. (Comp. Stats. 1911, p. 1650.)

**§ 870. Notice to County Attorney of Refusal to Pay Tax.**

Sec. 15. Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the person interested in the property liable to pay said tax to pay the same, he shall notify the county attorney of the proper county in writing of such refusal to pay said tax, and the county attorney so notified, if he has cause to believe a tax is due and unpaid, shall prosecute the proceeding in the county court in the proper county, as provided in section fourteen of this act, for the enforcement and collection of this tax. (Comp. Stats. 1911, p. 1650.)

**§ 871. Statement of County Judge and Clerk of Taxable Transfers.**

Sec. 16. The county judge and county clerk of each county shall, every three months, make a statement in writing to the county treasurer of the county, of the party from which or the party from whom they have reason to believe a tax under this act is due and unpaid. (Comp. Stats. 1911, p. 1651.)

**§ 872.**

Sec. 17. Repealed. (Laws 1905, H. B. 90; Comp. Stats. 1911, p. 1651.)



**§ 873. Book and Records to be Kept by County Judge.**

Sec. 18. The secretary of state shall furnish to each county judge a book in which he shall enter the returns made by appraisers, the cash value of annuities, life estates and terms of years and other property fixed by him, and the tax assessed thereon and the amounts of any receipts for payments thereof filed with him, which book shall be kept in the office of the county judge as public records. (Comp. Stats. 1911, p. 1651.)

**§ 874. Disposition to be Made of Revenue.**

Sec. 19. The county treasurer of each county shall keep all money collected under the provisions of this act in a separate and special fund to be expended under the direction of the county board of each county, for the sole purpose of the permanent improvement of the county roads; such roads shall not be built within the corporate limits of any city or village, but shall begin at the limit of any city or village and extending therefrom, in the direction most traveled by the public; to be determined upon by the said county board. Provided that such improvements may be made from the limit of any city of the metropolitan or first class and through a city of the second class or village where the road so determined upon to be improved is a main road between the country and such city of the metropolitan or first class. All contracts for such permanent improvements shall be let by the said board, by competitive bids after the plans and specifications therefor drawn by the county surveyor or engineer have been filed with the county clerk of each respective county. All bids for the construction of such roads shall be deposited with the county judge of the respective counties and opened by him in the presence of the county commissioner and county clerk, and then filed with the county clerk. All such permanent road beds shall not be less than twelve feet nor more than sixteen feet in width, and shall be constructed of the most durable and approved material, and the remaining part of said road shall be constructed at one side of the said permanent part, and be used as dirt road; provided that it shall be lawful for the county commissioners of any county having a population of not more than thirty thousand to use said fund in the manner herein provided for the improvement of any grade, bridge, cut, fill, or dirt road leading into any city or village within said county. Provided, that all money heretofore paid by the various county treasurers to the state treasurer, under the provisions of this act shall be upon proper vouchers signed by the county judge and county treasurer, paid back to the said county from which said tax was received, and said money when so refunded by the state treasurer shall be placed in the special fund heretofore mentioned in each county and shall be expended in like manner and for like purposes as hereinabove specified. (Amended 1905, H. R. 90; March 18, 1907; S. F. 21, sec. 1; Comp. Stats. 1911, p. 1651.)

**§ 875. Receipts for Payment of Tax.**

Sec. 20. Any person or body corporate shall, upon the payment of fifty cents, be entitled to a receipt from the county treasurer of any county or the copy of the receipt at his option, that may have been given by the treasurer for the payment of any tax under this act, which receipt shall designate

on what real property, if any, of which deceased may have died seized, said tax has been paid and by whom paid, and whether or not it is in full of said tax, and said receipt may be recorded in the clerk's office of said county in which the property may be situated, in the book to be kept by said clerk for such purpose. (Comp. Stats. 1911, p. 1651.)

**§ 876. Lien of Tax.**

Sec. 21. The lien of the inheritance tax shall continue until the said tax is settled and satisfied; provided, that said lien shall be limited to the property chargeable therewith; and provided further, that all inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to be paid and cease to be a lien as against any purchaser of real estate. (Comp. Stats. 1911, p. 1652.)

## CHAPTER XLII.

## NEW HAMPSHIRE STATUTE.

(*Laws of 1905, pp. 432-436; Laws of 1907, pp. 66-70; Laws of 1911, pp. 44-52.*)

- § 877. Transfers Subject to Tax.
- § 878. Estates for Years or for Life and Remainders.
- § 879. Bequest to Executor in Lieu of Commissions.
- § 880. Time for Payment of Bond—Interest and Lien.
- § 881. Collection of Tax by Executor.
- § 882. Legacy Charged upon Real Estate.
- § 883. Transfer of Less Than Fee.
- § 884. Sale of Land to Pay Tax.
- § 885. Statements and Accounts of Administrator—Inventory and Appraisal.
- § 886. Copies of Papers to be Sent State Treasurer.
- § 887. Notice to State Treasurer of Transfer of Estate of Decedent.
- § 888. Determination of Amount of Tax.
- § 889. Reappraisement—Assessment of Tax.
- § 890. Appeal—Enforcement of Lien.
- § 891. Application by State Treasurer for Administration.
- § 892. Account of Executor not Allowed Until Taxes Paid.
- § 893. Appearance Before State Treasurer in the Matter of Taxes.
- § 894. Transfer of Stock or Obligations by Foreign Executor.
- § 895. Transfer of Securities or Assets Belonging to Estate of Nonresident.
- § 896. State Treasurer a Party to All Proceedings.
- § 897. Books and Blanks to be Furnished Probate Judge.
- § 898. Time When Statute Takes Effect.
- § 877. Transfers Subject to Tax.

Sec. 1. All property within the jurisdiction of the state, real or personal, and any interest therein, whether belonging to inhabitants of the state or not, which shall pass by will, or by the laws regulating intestate succession, or by deed, grant, bargain, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or donor, to any person, absolutely or in trust, except to or for the use of the father, mother, husband, wife, brother, sister, lineal descendant, adopted child, the lineal descendant of any adopted child, the wife or widow of a son, or the husband of a daughter, of a decedent, or to or for the use of educational, religious, cemetery, or other institutions, societies or associations of public charity in this state, or for or upon trust for any charitable purpose in the state, or for the care of cemetery lots, or to a city or town in this state for public purposes, shall be subject to a tax of five per cent of its value, for the use of the state; and administrators, executors, and trustees, and any such grantees under a conveyance made during the

grantor's life, shall be liable for such taxes, with interest, until the same have been paid. An institution or society shall be deemed to be in this state, within the meaning of this act, when its sole object and purpose is to carry on charitable, religious or educational work within the state, but not otherwise. When the personal estate so passing from any person not an inhabitant of this state shall consist in whole or in part of shares in any railroad or street railway company or telegraph or telephone company incorporated under the laws of this state and also of some other state or country, so much only of each share as is proportional to the part of such company's right of way lying within this state shall be considered as property of such person within the jurisdiction of the state for the purposes of this act. (Laws 1911, p. 44.)

**§ 878. Estates for Years or for Life and Remainders.**

Sec. 2. When any interest in property less than an estate in fee shall pass by will, or otherwise, as set forth in section 1, to one or more beneficiaries, with remainder to others, the several interests of such beneficiaries, except such as may be entitled to exemption under the provisions of section 1, shall be subject to said tax. The value of an annuity or life estate shall be determined by the actuaries' combined experience tables at four per cent compound interest, and the value of any intermediate estate less than a fee shall be so determined whenever possible. The value of a remainder after such estate shall be determined by subtracting the value of the intermediate estate from the total value of the bequest or devise. Whenever such intermediate estate or remainder is conditioned upon the happening of a contingency, or dependent upon the exercise of a discretion, so that the value of either cannot be determined by the tables as hereinbefore provided, the value of the property which is the subject of the bequest shall be determined as provided in section 13, and such value having thus been ascertained the state treasurer shall, upon such evidence as may be furnished by the will and the executor's statement or by the beneficiaries or otherwise, determine the value of the interests of the several beneficiaries, and the values thus determined shall be deemed to be the values of such several interests for the purpose of the assessment of the tax except in so far as they shall be changed by the court upon appeal. The executor or any beneficiary aggrieved by such determination of the value of any such interest by the state treasurer may at any time within three months after notice thereof appeal therefrom to the probate court having jurisdiction of the estate of the decedent, which court shall determine such value subject to appeal as in other cases. Whenever the identity of the beneficiary who is to take such a remainder is conditioned upon the happening of a contingency, or dependent upon the exercise of a discretion the state treasurer shall assess and collect the tax upon such remainder as upon a taxable legacy, and the executor shall be liable for such tax as in other cases. Provided however that if at the termination of the intermediate estate such remainder or any portion thereof shall pass to a person or corporation which at the time of the death of the decedent was exempt from such tax, such person or corporation may at any time within one year after the termi-

nation of the intermediate estate, but not afterward, apply to the probate court for an abatement of the tax on such remainder as provided in section 12, and the state treasurer shall repay the amount adjudged to have been illegally exacted as provided in said section 12 with interest thereon at three per cent per annum from the date of the payment of the tax. Provided however that the power of the state treasurer, with the approval of the attorney general, to adjust the tax by compromise in certain cases, as set forth in chapter 69 of the laws of 1907, shall remain in force. (Laws 1911, p. 45.)

**§ 879. Bequest to Executor in Lieu of Commissions.**

Sec. 3. If a testator gives, bequeaths or devises to his executors or trustees any property otherwise liable to said tax, in lieu of their compensation, the value thereof in excess of reasonable compensation, as determined by the probate court upon the application of any interested party or the state treasurer, shall nevertheless be subject to the provisions of this chapter. (Laws 1911, p. 46.)

**§ 880. Time for Payment of Bond—Interest and Lien.**

Sec. 4. All taxes imposed by the provisions of this chapter, including taxes on intermediate estates and remainders as set forth in section 2, shall be due and payable to the state treasurer by the executors, administrators or trustees, at the expiration of two years after the date of their giving bonds. If the probate court has ordered the executor or administrator to retain funds to satisfy a claim of a creditor, the payment of the tax may be suspended by the court to await the disposition of such claim. If the taxes are not paid when due, interest at the rate of ten per cent per annum shall be charged and collected from the time the same became payable; and said taxes and interest shall be and remain a lien on the property subject to the taxes until the same are paid. (Laws 1911, p. 46.)

**§ 881. Collection of Tax by Executor.**

Sec. 5. An executor, administrator or trustee holding property subject to said tax shall deduct the tax therefrom or collect it from the legatee or person entitled to said property, and he shall not deliver property or a specific legacy subject to said tax until he has collected the tax thereon. When a specific bequest of personal property other than money is subject to a tax under the provisions of this act and the legatee neglects or refuses to pay the tax upon demand, the executor or trustee may upon such notice as the probate court may direct be authorized to sell such property, or if the same can be divided, such portion thereof as may be necessary and shall deduct the tax from the proceeds of such sale, and shall account to the legatee for the balance if any of such proceeds in lieu of the property. An executor or administrator shall collect taxes due upon land which is subject to tax under the provisions hereof from the heirs or devisees entitled thereto, and he may be authorized to sell said land according to the provisions of section 8 if they refuse or neglect to pay said tax. (Laws 1911, p. 46.)

**§ 882. Legacy Charged upon Real Estate.**

Sec. 6. If a legacy subject to said tax is charged upon or payable out of real estate, the heir or devisee, before paying it, shall deduct said tax therefrom and pay it to the executor, administrator or trustee, and the tax shall remain a charge upon said real estate until it is paid. Payment thereof may be enforced by the executor, administrator or trustee in the same manner as the payment of the legacy itself could be enforced. (Laws 1911, p. 46.)

**§ 883. Transfer of Less Than Fee.**

Sec. 7. When any interest in property less than an estate in fee is devised or bequeathed to one or more beneficiaries with remainder to others, and the interest of one or more of the beneficiaries is subject to said tax, the executor shall deduct the tax upon such taxable interests from the whole property thus devised or bequeathed and whenever property other than money is so devised or bequeathed he may, unless the taxes upon all the taxable interests are paid when due by the beneficiaries, be authorized to sell such property or such portion thereof as may be necessary, as provided in sections 5 and 8 and having deducted the unpaid taxes on such taxable interests from the proceeds of such sale, he shall account for the balance in lieu of the property sold as in other cases. (Laws 1911, p. 46.)

**§ 884. Sale of Land to Pay Tax.**

Sec. 8. The probate court may authorize executors, administrators and trustees to sell the real estate of a decedent for the payment of said tax in the same manner as it may authorize them to sell real estate for the payment of debts. (Laws 1911, p. 47.)

**§ 885. Statements and Accounts of Administrator—Inventory and Appraisal.**

Sec. 9. Every administrator shall prepare a statement in duplicate, showing as far as can be ascertained the names of all the heirs at law and their relationship to the decedent, and every executor shall prepare a like statement showing the relationship to the decedent of all legatees named in the will, and the age at the time of the death of the decedent of all legatees to whom property is bequeathed or devised for life or for a term of years, and the names of those, if any, who have died before the decedent, and shall file same with the register of probate at the time of his appointment. Letters of administration shall not be issued by the probate court to any executor or administrator until he has filed such statement in duplicate, and has given bond with sufficient sureties to pay all taxes for which he may be or become liable under the provisions of this act, and to comply with all of its provisions. Every executor and administrator when he files his account in the probate court shall file a duplicate thereof with the state treasurer. An inventory and appraisal under oath of the whole of every estate, any part of which may be subject to a tax under the provisions of this act, in the form prescribed by the statute, shall be filed in probate court by the executor, administrator or trustee within three months after

his appointment. If he neglects or refuses to comply with any of the requirements of this section he shall be liable to a penalty of not more than one thousand dollars, which shall be recovered by the state treasurer for the use of the state, and after hearing and such notice as the court of probate may require, the said court of probate may remove said executor or administrator, and appoint another person administrator with the will annexed, or administrator, as the case may be; and the register of probate shall notify the state treasurer within thirty days after the expiration of said three months of the failure of any executor, administrator or trustee to file such inventory and appraisal in his office. (Laws 1911, p. 47.)

**§ 886. Copies of Papers to be Sent State Treasurer.**

Sec. 10. The register of probate shall within thirty days after it is filed, send to the state treasurer, by mail, one copy of every statement filed with him by executors and administrators as provided in section 9, a copy of every will containing legacies which are subject to a tax under the provisions of this chapter, and a copy of the inventory and appraisal of every estate, any part of which may be subject to such a tax, unless notified by the state treasurer that such copies will not be required. The fees for such copies shall be paid by the state treasurer. The register shall also furnish such copies of papers and such information as to records and files in his office, in such form, as the state treasurer may require. A refusal or neglect by the register so to send such copies, or to furnish such information, shall be a breach of his official bond. The fees of registers of probate for copies furnished under the provisions of this section shall be one dollar for each will or inventory not exceeding four full typewritten pages, eight by ten and one-half inches, and twenty-five cents for each page in excess of four. (Laws 1911, p. 47.)

**§ 887. Notice to State Treasurer of Transfer of Estate of Decedent.**

Sec. 11. If real estate of a decedent so passes to another person as to become subject to said tax, his executor, administrator or trustee shall inform the state treasurer thereof within six months after his appointment, or if the fact is not known to him within that time, then within one month after the fact becomes known to him. (Laws 1911, p. 48.)

**§ 888. Determination of Amount of Tax.**

Sec. 12. The state treasurer shall determine the amount of all taxes due and payable under the provisions of this act, and shall certify the amount so due and payable to the executor or administrator if any, otherwise to the person or persons by whom the tax is payable; but in the determination of the amount of any tax said state treasurer shall not be required to consider any payments on account of debts or expenses of administration which have not been allowed by the probate court having jurisdiction of said estate. The amount due upon the claim of any creditor against the estate of a deceased person arising under a contract made after the passage of this act, if payable by the terms of such contract at or after the death of the deceased shall be subject to the same tax imposed by this chapter

upon a legacy of like amount. The value of legacies or distributive shares in the estates of deceased persons for the purpose of the legacy or succession tax shall not be diminished by reason of any claim against the estate based upon such a contract in favor of the persons entitled to such legacies or distributive shares, except in so far as it may be shown affirmatively by competent evidence that such claim was legally due and payable in the lifetime of the decedent. Payment of the amount so certified shall be a discharge of the tax. An executor, administrator, trustee or grantee who is aggrieved by any such determination of the state treasurer and who pays the tax assessed without appeal, may, within one year after the payment of such tax to the treasurer, but not afterward, apply to the probate court having jurisdiction of the estate of the decedent for the abatement of said tax or any part thereof, and if the court adjudges that said tax or any part thereof was wrongfully exacted it shall order an abatement of such portion of said tax as was assessed without authority of law which said order or decree shall be subject to appeal as in other cases. Upon a final decision ordering an abatement of any portion of said tax, the state treasurer shall repay the amount adjudged to have been illegally exacted without any further act or resolve making appropriation therefor. Whenever a specific bequest of household furniture, wearing apparel, personal ornaments or similar articles of small value is subject to a tax under the provisions of this act, the state treasurer in his discretion may abate such tax if in his opinion the tax is not of sufficient amount to justify the labor and expense of its collection. (Laws 1911, p. 48.)

**§ 889. Reappraisement—Assessment of Tax.**

Sec. 13. If an executor or administrator shall fail to file an inventory and appraisal in the probate court as provided in section 9 of this act, or if the state treasurer is not satisfied with the inventory and appraisal which is filed, the state treasurer may employ a suitable person to appraise the property and the executor or administrator shall show the property of the decedent to such appraiser upon demand, and shall make and subscribe his oath that the property thus shown includes all the property of the decedent that has come to his knowledge or possession. Such appraiser shall prepare an inventory of said property, and shall appraise it at its actual market value at the time of the decedent's death and shall return such inventory and appraisal to the state treasurer. The expense of such appraisal shall be a charge upon the estate of the decedent as an expense of administration in all cases where an inventory and appraisal has not been filed as provided in said section 9, otherwise the expense shall be paid by the state treasurer. An executor or administrator who shall neglect or refuse to show the property of the decedent to such appraiser upon demand or to make and subscribe such oath shall be liable to the same penalty as for a violation of the provisions of said section 9. Said tax shall be assessed upon the actual market value of the property at the time of the decedent's death. Such value shall be determined by the state treasurer and notified by him to the person or persons by whom the tax is payable, and such determination shall be final unless the value so determined shall be reduced



by proceedings as herein provided. Upon the application of any party interested in the succession, or of the executor, administrator, or trustee, made at any time within three months after notice of such determination, the probate court shall appoint three disinterested appraisers, or with the consent of the state treasurer, one disinterested appraiser, who first being sworn, shall appraise such property at its actual market value, as of the date of the death of the decedent and shall make return thereof to said court. Such return when accepted by said court, shall be final; provided, that any party aggrieved by such appraisal shall have an appeal upon matters of law. One-half of the fees of said appraisers, as determined by the judge of said court, shall be paid by the state treasurer, and one-half of said fees shall be paid by the other party or parties to said proceeding. (Laws 1911, p. 49.)

**§ 890. Appeal—Enforcement of Lien.**

Sec. 14. An executor, administrator, trustee or grantee who is aggrieved by the assessment of any tax by the state treasurer as provided in section 12 may at any time within three months after notice of such assessment appeal therefrom to the probate court having jurisdiction of the settlement of the estate of the decedent, which court shall, subject to appeal as in other cases, hear and determine all questions relative to said tax, and the state treasurer shall represent the state in any such proceeding. Whenever any real estate or separate parcel thereof is subject to a lien created by this act, or any amendment thereof, the probate court shall have jurisdiction in like proceedings to make such order or decree as will otherwise secure to the state the payment of any tax due or to become due on such real estate or separate parcel thereof, and upon the performance of such order or decree to discharge such lien. (Laws 1911, p. 50.)

**§ 891. Application by State Treasurer for Administration.**

Sec. 15. If, upon the decease of a person leaving an estate liable to a tax under the provisions of this chapter, a will disposing of such estate is not offered for probate, or an application for administration made within four months after such decease, the proper probate court, upon application by the state treasurer, shall appoint an administrator. (Laws 1911, p. 50.)

**§ 892. Account of Executor not Allowed Until Taxes Paid.**

Sec. 16. No account of an executor, administrator, or trustee shall be allowed by the probate court until the certificate of the state treasurer has been filed in said court, that all taxes imposed by the provisions of this act upon any property or interest therein belonging to the estate to be included in said account, and already payable, have been paid, and that all taxes which may become due on said estate have been paid, or settled as hereinbefore provided, or that the payment thereof to the state is secured by deposit or by lien on real estate. The certificate of the state treasurer as to the amount of the tax and his receipt for the amount therein certified shall be conclusive as to the payment of the tax, to the extent of said certification. (Laws 1911, p. 50.)

**§ 893. Appearance Before State Treasurer in the Matter of Taxes.**

Sec. 17. At any time after the expiration of two years from the date of the bond of the executor or administrator of any estate upon which the tax has not been determined as provided in section 12, or upon which no tax has been paid, the state treasurer may require such executor or administrator, or any person or corporation interested in the succession to appear at the state treasury, at such time as the treasurer may designate and then and there to produce for the use of the treasurer in determining whether or not the estate is subject to said tax and the amount of such tax, if any, all books, papers or securities which may be in the possession or control of such executor, administrator or beneficiary relating to such estate or tax, and to furnish such other information relating to the same as he may be able and the treasurer may require. Whenever the treasurer shall desire the attendance of an executor, administrator or beneficiary as herein provided, he shall issue a notice stating the time when such attendance is required, and shall transmit the same by registered mail to such person or corporation, fourteen days at least before the date when such person or corporation is required to appear. If a person or corporation receiving such notice neglects to attend, or to give attendance so long as may be necessary for the purpose for which the notice was issued, or refuses to produce such books, papers or securities or to furnish such information, such person or corporation shall be liable to a penalty of twenty-five dollars (\$25) for each offense which shall be recovered by the state treasurer for the use of the state. The state treasurer may commence an action for the recovery of any of said taxes at any time after the same become payable; and also whenever the judge of a probate court certifies to him that the final account of an executor, administrator or trustee has been filed in such court and that the settlement of the estate is delayed because of the non-payment of said tax. The probate court shall so certify upon the application of any heir, legatee or other person interested therein, and may extend the time of payment of said tax whenever the circumstances of the case require. (Laws 1911, p. 50.)

**§ 894. Transfer of Stock or Obligations by Foreign Executor.**

Sec. 18. If a foreign executor, administrator or trustee assigns or transfers any stock or obligation in any national bank located in this state or in any corporation organized under the laws of this state, owned by a deceased nonresident at the date of his death and liable to a tax under the provisions of this chapter, the tax shall be paid to the state treasurer at the time of such assignment or transfer, and if it is not paid when due, such executor, administrator or trustee shall be personally liable therefor until it is paid. A bank located in this state or a corporation organized under the laws of this state which shall record a transfer of any share of its stock or of its obligations made by a foreign executor, administrator or trustee, or issue a new certificate for a share of its stock or of this transfer of an obligation at the instance of a foreign executor, administrator or trustee, before all taxes imposed thereon by the provisions of this chapter have been paid, shall be liable for such tax in an action brought by the state treasurer. (Laws 1911, p. 51.)

**§ 895. Transfer of Securities or Assets Belonging to Estate of Non-resident.**

Sec. 19. Securities or assets belonging to the estate of a deceased non-resident shall not be delivered or transferred to a foreign executor, administrator, or legal representative of said decedent, unless such executor, administrator or legal representative has been licensed to receive such securities or assets by the probate court without serving notice upon the state treasurer of the time and place of such intended delivery or transfer seven days at least before the time of such delivery or transfer. The state treasurer, either personally or by representative, may examine such securities or assets at the time of such delivery or transfer. When such securities or assets are liable to a tax under the provisions of this chapter, such tax shall be paid before such delivery or transfer. Failure to serve such notice or to allow such examination, or delivery or transfer of such securities or assets before the payment of such tax to the state treasurer shall render the person or corporation making the delivery or transfer liable in an action brought by the state treasurer to the payment of the tax due upon said securities or assets. (Laws 1911, p. 51.)

**§ 896. State Treasurer a Party to All Proceedings.**

Sec. 20. The state treasurer shall be made a party to all petitions by foreign executors, administrators, or trustees brought under the provisions of this act, or under section 23 of chapter 189 of the Public Statutes, and no decree shall be made upon any such petition unless it appears that notice of such petition has been served on the state treasurer fourteen days at least before the return day of such petition. The state treasurer shall be entitled to appear in any proceeding in any court in which the decree may in any way affect the tax and no decree in any such proceeding or upon appeal therefrom shall be binding upon the state unless personal notice of such proceeding shall have been given to the state treasurer. (Laws 1911, p. 52.)

**§ 897. Books and Blanks to be Furnished Probate Judge.**

Sec. 21. The state treasurer shall provide the judges and registers of probate of the state with such books and blanks as are requisite for the execution of this act. (Laws 1911, p. 52.)

**§ 898. Time When Statute Takes Effect.**

Sec. 22. This act shall not apply to estates of persons deceased prior to the date when it takes effect, or to property passing by deed, grant, bargain, sale or gift taking effect prior to said date; but said estates and property shall remain subject to the provisions of the laws in force prior to the passage of this act. Chapter 64 of the Laws of 1907 is hereby repealed, except in so far as it applies to estates of persons deceased prior to the passage of this act. (Laws 1911, p. 52.)

This act shall take effect upon its passage. Approved March 9, 1911. (Laws 1911, p. 52.)

## CHAPTER XLIII.

## NEW JERSEY STATUTE.

(*Public Laws of 1894, p. 318; Public Laws of 1898, p. 106; Public Laws of 1902, p. 670; Public Laws of 1903, p. 128; Public Laws of 1906, p. 432; Public Laws of 1908, p. 200; Public Laws of 1909, pp. 49, 236, 304, 325; Compiled Statutes of 1910, pp. 5301-5311.*)

- § 899. Transfers Subject to Tax—Rates—Persons Liable—Exemptions.
- § 900. Estates for Years or for Life and Remainders.
- § 901. Expectancies, Contingent Estates, and Executory Devises.
- § 902. Bequest to Executor in Lieu of Compensation.
- § 903. Time for Payment—Interest and Discount—Bond—Lien.
- § 904. Penalty for Nonpayment of Tax.
- § 905. Collection of Tax by Executor.
- § 906. Sale of Property to Pay Tax.
- § 907. Payment to State Treasurer—Receipts—Records.
- § 908. Notice to Controller of Taxable Transfers.
- § 909. Refund of Tax on Proof of Debts After Distribution.
- § 910. Transfer of Property of Nonresident Decedent.
- § 911. Liability of Property to Tax Due Prior to Passage of This Act.
- § 912. Valuation of Annuities and Estates for Life or for Years.
- § 913. Refund of Tax Erroneously Paid.
- § 914. Notice to Controller of Administration Proceedings.
- § 915. Examination of Papers and Records by Controller.
- § 916. Appraisers and Appraisement.
- § 917. Compensation—Penalty for Taking Illegal Fees.
- § 918. Jurisdiction of Ordinary.
- § 919. Citation to Delinquent Taxpayer.
- § 920. Notice to Attorney General of Delinquencies—Proceedings.
- § 921. Records to be Kept by Controller.
- § 922. Compensation to Person Discovering Taxable Transfer.
- § 923. False Statement to Appraiser—Penalty.
- § 924. Definition of Terms.
- § 925. Constitutionality of Sections.
- § 926. Repeal of Inconsistent Acts—Liens and Remedies.
- § 927. Exemption of Certain Transfers.
- § 928. Retrospective Operation of Exemption.
- § 929. Warrant to Controller.

§ 899. Transfers Subject to Tax—Rates—Persons Liable—Exemptions.

Sec. 1. A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, in the following cases:

When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of the state.

When the transfer is by will or intestate law, of property within the state, and the decedent was a nonresident of the state at the time of his death.

When the transfer is of property made by a resident or by a nonresident, when such nonresident's property is within this state, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect, in possession or enjoyment, at or after such death.

When any person or corporation comes into the possession or enjoyment, by a transfer from a resident or nonresident decedent when such nonresident decedent's property is within this state, of an estate in expectancy of any kind or character which is contingent or defeasible, transferred by an instrument taking effect after the passage of this act, or of any property transferred pursuant to a power of appointment contained in any instrument taking effect after the passage of this act.

All taxes imposed by this act shall be at the rate of five per centum upon the clear market value of such property, to be paid to the treasurer of the state of New Jersey, for the use of said state, and all administrators, executors, trustees, grantees, donees or vendees, shall be personally liable for any and all such taxes until the same shall have been paid as hereinafter directed, for which an action of debt shall lie in the name of the state of New Jersey.

Property passing to churches, hospitals and orphan asylums, public libraries, Bible and tract societies, religious, benevolent and charitable institutions and organizations, or to a father, mother, husband, wife, child or children, or lineal descendant born in lawful wedlock, brother or sister, or the wife or widow of a son, or the husband of a daughter, shall be exempt from taxation under this act, but no other exemption of any kind shall be allowed. (Pub. Laws 1909, p. 325; Comp. Stats. 1910, p. 5301.)

#### **§ 900. Estates for Years or for Life and Remainders.**

Sec. 2. When any persons shall bequeath or devise, convey, grant, sell or give any property or interest therein, or income therefrom, to any person or corporation for life or for a term of years, and a vested interest in the remainder or corpus of said property to any person, or to any body politic or corporate, the whole of said property, so transferred as aforesaid, shall be appraised immediately at its clear market value, and after deducting from such appraisement the value of the estate for life or estate for a term of years, the tax on such life estate or for a term of years, if taxable under this act, shall be immediately levied and assessed, and the tax on the remainder of the property so as aforesaid transferred, if such property is taxable under this act, shall be levied and assessed immediately, but such tax shall not become due or payable until the time or period arrives when said remainderman, or his representatives, shall become entitled to the actual possession or enjoyment of such property, and shall then become due and payable immediately, and, if not paid within thirty days, interest at

the rate of ten per centum per annum shall be charged and collected from the time when said tax became due and payable. If the property passing to a remainderman, as hereinabove provided, be personal property, such remainderman, or the executor or trustee of the estate, shall give a bond to the state of New Jersey in double the amount of the tax on the property of such remainderman, conditioned to pay said tax, and any interest which may fall due thereon, said bond to be approved as to the form and sufficiency thereof by the attorney general of this state, and any executor or trustee who shall assign or deliver to any such remainderman any personal property liable to a tax under this act, unless a bond be given as specified in this section, or said tax be paid, shall be personally liable for said tax and all interest due thereon, which liability may be enforced in an action of debt in the name of the state of New Jersey. (Pub. Laws 1909, p. 326; Comp. Stats. 1910, p. 5304.)

**§ 901. Expectancies, Contingent Estates, and Executory Devises.**

Sec. 3. Where an instrument creates an executory devise, or an estate in expectancy of any kind or character which is contingent or defeasible, the property transferred in accordance with such executory devise or the property in which such contingent or defeasible interest is created by any such instrument, shall be appraised immediately at its clear market value, and after deducting from such appraisement the value of the life estate, or estate for a term of years, created by such instrument, the tax on such life estate or estate for a term of years, if taxable under this act, shall be immediately levied and assessed, but the tax on the balance of said appraised value of such estate shall not be levied or assessed until the person or corporation entitled to said property comes into the beneficial enjoyment, seisin or possession thereof, and if taxable, shall then be taxed. Where an instrument creates a power of appointment, the life estate, or estate for a term of years, created and transferred by such instrument, if taxable, shall be immediately appraised and taxed at its clear market value, but the appraisal and taxation of the interest or interests in remainder to be disposed of by the donee of power shall be suspended until the exercise of the power of appointment, and shall then be taxed, if taxable, at the clear market value of such property, which value of such property shall be determined as of the date of the death of the creator of the power.

A tax on an estate for life or on an estate for a term of years, levied and assessed as directed in this section, shall be due and payable as provided in section five of this act. All other taxes levied and assessed as directed in this section and all taxes on any property which may be transferred to the residuary legatees, heir or next of kin of any decedent, or which may revert to the heir of any decedent by reason of the failure of any contingency upon which any remainder may be limited, shall be due and payable within two months after the person entitled to the property shall come into the enjoyment, seisin or possession thereof, and if not paid shall thenceforth bear interest at the rate of ten per centum per annum until paid. No executor or trustee shall turn over any property of an estate mentioned in this section until the tax due thereon, and interest, if any, shall have been paid to the treasurer of this state, and any executor or trustee who

shall turn over any property prior to the payment of the tax due thereon, together with interest, shall be personally liable for such tax and interest, which said liability may be enforced by an action of debt in the name of the state of New Jersey.

The controller of the treasury of this state, by and with the consent of the attorney general, expressed in writing, is hereby empowered and authorized to enter into an agreement with the executors or trustees of any estate in which remainders or expectant estates have been of such a nature, or so disposed and circumstanced that the taxes therein were held not presently payable, or where the interest of the legatees or devisees were not ascertainable at the death of the testator, grantor, donor or vendor, and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said executors and trustees upon the payment of the taxes provided for in such composition; provided, however, that no such composition shall be conclusive in favor of said executors or trustees as against the interest of such cestuis que trust as may possess either present rights of enjoyment, or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto, either personally, when competent, or by guardian or committee. (Pub. Laws 1909, p. 327; Comp. Stats. 1910, p. 5304.)

**§ 902. Bequest to Executor in Lieu of Compensation.**

Sec. 4. Whenever a decedent appoints or names one or more executors or trustees, and makes a bequest or devise of property to them in lieu of their commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequest, devise or residuary legacy exceeds what would be a reasonable compensation for their services, such excess shall be liable to said tax, and the ordinary, or the orphans court, having jurisdiction in the case, shall fix such compensation. (Pub. Laws 1909, 329; Comp. Stats. 1910, p. 5305.)

**§ 903. Time for Payment—Interest and Discount—Bond—Lien.**

Sec. 5. All taxes imposed by this act shall be due and payable at the death of the testator, intestate, grantor, donor, vendor, unless in this act otherwise provided, and if the same are paid within one year a discount of five per centum shall be allowed and deducted from such taxes; if not paid within one year from the date of the death of the testator, intestate, grantor, donor or vendor, such tax shall bear interest at the rate of ten per centum per annum, to be computed from the expiration of one year from the date of the death of such testator, intestate, grantor, donor or vendor, until the same is paid, and in all cases where the executors, administrators, grantees, donees, vendees or trustees do not pay such tax within one year from the death of the decedent they shall be required to give a bond, in the form and effect prescribed in section two of this act, for the payment of such tax, together with interest.

All taxes levied and assessed under this act on the transfer of any real property shall be and remain a lien on said property until paid. (Pub. Laws 1909, p. 329; Comp. Stats. 1910, p. 5305.)

**§ 904. Penalty for Nonpayment of Tax.**

Sec. 6. The penalty of ten per centum per annum imposed by section five hereof for the nonpayment of said tax shall not be charged where in cases by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay the estate of any decedent, or a part thereof, cannot be settled at the end of a year from the death of the decedent, and in such cases only six per centum per annum shall be charged upon the said tax from the expiration of such year until the cause of such delay is removed. (Pub. Laws 1909, p. 329; Comp. Stats. 1910, p. 5306.)

**§ 905. Collection of Tax by Executor.**

Sec. 7. Any administrator, executor or trustee having in charge or trust any legacy or property for distribution, subject to said tax, shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon upon the appraised value thereof from the legatee or persons entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon, and whenever any such legacy shall be charged upon or payable out of real estate, the heir or devisee, before paying the same shall deduct said tax therefrom and pay the same to the executor, administrator or trustee, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the payment of such legacy might be enforced; if, however, such legacy be given in money to any person for a limited period he shall retain the tax upon the whole amount, but if it be not in money he shall make application to the court having jurisdiction of his accounts to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require. (Pub. Laws 1909, p. 330; Comp. Stats. 1910, p. 5306.)

**§ 906. Sale of Property to Pay Tax.**

Sec. 8. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax in the same manner as they may be enabled by law to do for the payment of debts of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed. (Pub. Laws 1909, p. 330; Comp. Stats. 1910, p. 5306.)

**§ 907. Payment to State Treasurer—Receipts—Records.**

Sec. 9. Any sum of money retained by an executor, administrator or trustee, or paid into his hands for any tax due under this act, shall be paid by him within thirty days thereafter, to the treasurer of this state, and the person so paying shall be entitled to receive a receipt signed by the treasurer of this state and countersigned by the controller thereof, for such payment, which receipt shall be a proper voucher in the settlement of the account of any such executor, administrator or trustee; such person so paying, in addition to the foregoing receipt, shall, if the tax paid be in part or in whole upon real property, be entitled to receive an additional



receipt, signed by the treasurer of this state and countersigned by the controller thereof, in which shall be designated upon what real property, if any, said tax has been paid, and by whom paid, and whether or not it is in full of said tax on said real property, and said receipt may be recorded in the clerk's office of the county in which said real property is situated, in a book which shall be kept by said clerk for such purpose and be labeled "collateral tax." (Pub. Laws 1909, p. 330; Comp. Stats. 1910, p. 5306.)

**§ 908. Notice to Controller of Taxable Transfers.**

Sec. 10. Whenever any of the real estate of which any decedent may die seised shall pass to any body politic or corporate, or to any person other than the father, mother, husband, wife, child, or lineal descendant born in lawful wedlock, brother or sister, wife or widow of a son, or husband of a daughter, or in trust for them, or some of them, it shall be the duty of the executors, administrators or trustees of such decedent to give information thereof in writing to the controller of the treasury of this state within six months after they undertake the execution of their respective duties, or, if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge. (Pub. Laws 1909, p. 331; Comp. Stats. 1910, p. 5307.)

**§ 909. Refund of Tax on Proof of Debts After Distribution.**

Sec. 11. Whenever any debts shall be proven against the estate of the decedent, after the payment of the legacies or distribution of property from which the said tax has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir, or next of kin, a proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee, if the said tax has not been paid to the state treasurer, or by the state treasurer, if the same has been paid into the state treasury. (Pub. Laws 1909, p. 331; Comp. Stats. 1910, p. 5307.)

**§ 910. Transfer of Property of Nonresident Decedent.**

Sec. 12. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or standing in the joint names of such a decedent and one or more persons, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of this state on the transfer thereof. No corporation of this state shall transfer any such stock, unless notice of the time of such intended transfer be served upon the controller of the treasury of this state at least ten days prior to such transfer, nor until said controller shall consent thereto in writing. Any corporation making such a transfer without first obtaining the consent of the controller of the treasury as aforesaid shall be liable for the amount of any tax which may thereafter be assessed on account of the transfer of such stock, together with the interest thereon, and in addition thereto a penalty of one thousand dollars, which liability for such tax and interest and said penalty herein prescribed may be enforced in an action of debt in the name of the state of New Jersey.

On the transfer of property in this state of a nonresident decedent, if all or any part of the estate of such decedent wherever situated shall pass to persons or corporations who would have been taxable under this act, if such decedent had been a resident of this state, such property located within this state shall be subject to a tax, which said tax shall bear the same ratio to the entire tax which the said estate of such decedent would have been subject to under this act if such nonresident decedent had been a resident of this state, as such property located in this state bears to the entire estate of such nonresident decedent wherever situated; provided, that nothing this clause contained shall apply to any specific bequest or devise of any property in this state. (Pub. Laws 1909, p. 331; Comp. Stats. 1910, p. 5307.)

**§ 911. Liability of Property to Tax Due Prior to Passage of This Act.**

Sec. 13. The controller of the treasury of this state, either personally or by any of his employees, may investigate the question of the liability of any property to any tax due prior to the passage of this act, and if said controller is satisfied that any taxes are due this state, he shall report such fact to the register of the prerogative court, or surrogate of the proper county, whereupon said register or surrogate shall cause said property to be taxed. (Pub. Laws 1909, p. 332; Comp. Stats. 1910, p. 5308.)

**§ 912. Valuation of Annuities and Estates for Life or for Years.**

Sec. 14. In determining the value of a life estate, annuity, or estate for a term of years, the American experience table of mortality, with interest at the rate of five per centum per annum shall be used. (Pub. Laws 1909, p. 333; Comp. Stats. 1910, p. 5308.)

**§ 913. Refund of Tax Erroneously Paid.**

Sec. 15. When any amount of said tax shall have been paid erroneously to the state treasurer, it shall be lawful for the controller of the treasury, on satisfactory proof rendered to him of such erroneous payments, to draw his warrant on the state treasurer, in favor of the executor, administrator, person or persons who have paid any such tax in error, or who may be lawfully entitled to receive the same, for the amount of such tax so paid in error; provided, that all such applications for the repayment of such tax shall be made within two years from the date of such payment. (Pub. Laws 1909, p. 333; Comp. Stats. 1910, p. 5308.)

**§ 914. Notice to Controller of Administration Proceedings.**

Sec. 16. The register of the prerogative court and every surrogate of any county in this state shall, within ten days after the probate of any will, either foreign or domestic, of the filing of a copy of any foreign will, or the taking out of letters of administration, notify, in writing, the controller of the treasury of this state of such probate or administration; and any surrogate or the register of the prerogative court failing to notify said controller in writing of the probate of any will, or the filing of a copy of any foreign will, or the taking out of any letters of administration, shall be liable to a penalty of two hundred dollars, to be recovered in an action

of debt in the name of the state of New Jersey. (Pub. Laws 1909, p. 333; Comp. Stats. 1910, p. 5308.)

**§ 915. Examination of Papers and Records by Controller.**

Sec. 17. The controller of the treasury of this state, either personally or by his assistant or other employee, is hereby empowered to examine any and all papers, documents and files which now are or hereafter may be filed or lodged with the register of the prerogative court, or with the surrogate of any county or with any other official of the state or of any municipality thereof, or with any person or corporation, for the purpose of ascertaining what, if any, property is, or shall be, liable to the payment of the tax provided for by this act. The sum of ten thousand dollars is hereby appropriated to the controller of the treasury of this state for the purpose of enabling said controller to carry out the provisions of this act. (Pub. Laws 1909, p. 333; Comp. Stats. 1910, p. 5308.)

**§ 916. Appraisers and Appraisement.**

Sec. 18. In order to fix the value of property of persons whose estates shall be liable to the payment of a tax under this act, whether the same be in the ownership of a resident or nonresident decedent, the controller of the treasury of this state on the application of any interested party, or upon his own motion, shall appoint some competent person as appraiser as often as and whenever occasion may require. Every such appraiser shall forthwith give notice, by mail, to such persons as the controller of the treasury of this state shall direct, of the time and place when and where he will appraise such property. He shall at such time and place appraise the same at its fair market value, and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make report thereof, and of such value, in writing to said controller of the treasury, together with such other facts in relation thereto as the said controller of the treasury may, by order, require, which report and other data required by said controller shall be filed in the office of such controller, and from said report the said controller of the treasury shall forthwith assess and fix the cash value of such estate and levy the tax to which the same is liable, and shall immediately give notice thereof, by mail, to all parties known by said controller of the treasury to be interested therein. Any person or corporation dissatisfied with said appraisement or assessment may appeal therefrom to the ordinary of this state within sixty days after the making and filing of such assessment, on giving a bond, approved by the ordinary of this state, conditioned to pay said tax so as aforesaid levied by the said controller of the treasury, together with interest and costs, if the said tax be affirmed by the ordinary. Any person failing to attend before an appraiser after service of a subpoena, or refusing to give evidence concerning any estate, shall be liable to a penalty of two hundred dollars, to be recovered in an action of debt by the controller of the treasury. (Pub. Laws 1909, p. 334; Comp. Stats. 1910, p. 5309.)

**§ 917. Compensation—Penalty for Taking Illegal Fees.**

Sec. 19. Any appraiser appointed pursuant to the provisions of this act who shall take any fee or reward, either directly or indirectly, from any executor or administrator, or any other person liable to pay any tax or any portion thereof, under the provisions of this act, shall be guilty of a misdemeanor, and, on conviction, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court, and, in addition thereto, the controller of the treasury of this state shall immediately dismiss such appraiser from his employment. The compensation of said appraisers shall be a sum not exceeding five dollars per day, to be fixed and determined upon by the said controller of the treasury, and to be paid out of the treasury of this state. Such appraisers shall also be reimbursed for all actual expenses incurred in the discharge of their duties. (Pub. Laws 1909, p. 335; Comp. Stats. 1910, p. 5309.)

**§ 918. Jurisdiction of Ordinary.**

Sec. 20. The ordinary of this state shall have jurisdiction to hear and determine all questions in relation to any tax levied under the provisions of this act. (Pub. Laws 1909, p. 335; Comp. Stats. 1910, p. 5309.)

**§ 919. Citation to Delinquent Taxpayer.**

Sec. 21. If it shall appear to the controller of the treasury of this state that any tax which has accrued under this act has not been paid according to law said controller shall report such fact, in writing, to the register of the prerogative court, and said register shall issue a citation citing the persons or corporations interested in the property liable to said tax to appear before the ordinary on a certain day, not more than three months from the date of such citation, and show cause why such tax should not be paid; the service of such citation and the subsequent proceedings had thereon shall conform to the practice prevailing in the prerogative court. Upon the making of any decree the register of the prerogative court shall, upon the request of the controller of the treasury of this state furnish one or more copies of said decree, and the same shall be docketed and filed by the clerk of the supreme court, or by the county clerk of any county in this state, upon the request of the controller of the treasury of this state, and the same shall have the same effect as a lien by judgment, and execution shall issue thereon according to the rules and practice appertaining to other judgments docketed and filed with said respective clerks. (Pub. Laws 1909, p. 335; Comp. Stats. 1910, p. 5310.)

**§ 920. Notice to Attorney General of Delinquencies—Proceedings.**

Sec. 22. Whenever the controller of the treasury of this state shall have reason to believe that any tax is due and unpaid under this act, after the neglect and refusal of the persons or corporations interested in the property and liable to said tax to pay the same, he shall notify the attorney general of this state, in writing, of such failure to pay such tax, and the said attorney general, when so notified, if he have probable cause to be-

lieve that a tax is due and unpaid, shall prosecute the proceeding before the ordinary of this state, as provided for in section twenty-one of this act, and the state treasurer shall, on the warrant of the controller, pay all the expenses of said proceeding. (Pub. Laws 1909, p. 336; Comp. Stats. 1910, p. 5310.)

**§ 921. Records to be Kept by Controller.**

Sec. 23. The controller of the treasury of this state shall keep a record in his department of all returns made by appraisers, the cash value of annuities, life estates and term of years, and the amount of all taxes assessed by him; in addition to the foregoing the said controller may enter in said books all other information and data which he may deem desirable or proper. (Pub. Laws 1909, p. 336; Comp. Stats. 1910, p. 5310.)

**§ 922. Compensation to Person Discovering Taxable Transfer.**

Sec. 24. Whenever a resident of this state has died, or shall hereafter die, testate or intestate, seised or possessed of any property liable to the payment of a tax under the provisions of this act, and no letters testamentary or of administration have or shall have been taken out on such estate within one year from the date of the death of such person, or whenever there is property, real or personal, within this state owned by a non-resident decedent which is liable to the payment of a tax under this act, and such nonresident decedent has been deceased for a period of three months without the tax due this state having been paid; it shall be lawful for the controller of the treasury of this state to enter into an agreement in writing, with any person giving him information of the existence of property so liable to a tax, to pay to such person or persons out of any sum which may be collected from any such estate an amount not exceeding ten per centum thereof. (Pub. Laws 1909, p. 336; Comp. Stats. 1910, p. 5310.)

**§ 923. False Statement to Appraiser—Penalty.**

Sec. 25. Every executor, administrator, trustee, grantee, donee or vendee who willfully and knowingly subscribes or makes any false statement of facts, or knowingly subscribes or exhibits any false paper or false report with intent to deceive any appraiser appointed pursuant to the provisions of this act, shall be guilty of a misdemeanor and punished accordingly. (Pub. Laws 1909, p. 337; Comp. Stats. 1910, p. 5310.)

**§ 924. Definition of Terms.**

Sec. 26. The words "estate" and "property," wherever used in this act, except where the subject or context is repugnant to such construction shall be construed to mean the interest of the testator, intestate, grantor, bargainor or vendor, passing or transferred to the individual or specific legatee, devisee, heir, next of kin, grantee, donee or vendee, not exempt under the provisions of this act, whether such property be situated within or without this state. The word "transfer," as used in this act, shall be taken to include the passing of property, or any interest therein, in possession or

enjoyment, present or future, by distribution by statute, descent, devise, bequest, grant, deed, bargain, sale or gift. (Pub. Laws 1909, p. 337; Comp. Stats. 1910, p. 5311.)

**§ 925. Constitutionality of Sections.**

Sec. 27. In case for any reason any section or any provisions of this act shall be questioned in any court, and shall be held to be unconstitutional or invalid, the same shall not be held to affect any other section or provision of this act. (Pub. Laws 1909, p. 337; Comp. Stats. 1910, p. 5311.)

**§ 926. Repeal of Inconsistent Acts—Liens and Remedies.**

Sec. 28. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, but nothing in this repealer shall affect or impair the lien of any taxes heretofore assessed, or any tax due and payable, or any remedies for the collection of the same, or to surrender any remedies, powers, rights or privileges acquired by the state under any act heretofore passed, or to relieve any person or corporation from any penalty imposed by said acts. (Pub. Laws 1909, p. 337; Comp. Stats. 1910, p. 5311.)

**SUPPLEMENT.**

**§ 927. Exemption of Certain Transfers.**

Sec. 1. All property passing to any executor, trustee or public corporation for, or to be expended in, the erection of a public monument or public memorial in this state, shall be exempt from the payment of taxes under the act to which this is a supplement. (Pub. Laws 1910, p. 42.)

**§ 928. Retrospective Operation of Exemption.**

Sec. 2. The exemption from the payment of such taxes, hereby provided for, shall extend to all property that may have heretofore passed for such purpose as well as to all property that may hereafter pass for such purpose. (Pub. Laws 1910, p. 42.)

**§ 929. Warrant to Controller.**

Sec. 1. The controller of the treasury of this state, after the close of each fiscal year, shall draw his warrant on the treasurer in favor of the collector of each county for five per centum of the amount of transfer tax collected from property of resident decedents in said county during said fiscal year, whereupon the same shall be paid out of the treasury of this state; provided, however, that this act shall only become operative if a bill entitled "An act to tax the transfer of property of resident and non-resident decedents by devise, bequests, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases," shall become a law; and provided further, that for the fiscal year ending October thirty-first, one thousand nine hundred and nine, only five per centum of the transfer tax collected from the time said act becomes a law to said thirty-first day of October shall be paid. (Pub. Laws 1909, p. 325.)

## CHAPTER XLIV.

### NEW YORK STATUTE.

(3 *Birdseye's Rev. Stats., Codes and Gen. Laws 1901, pp. 3591-3604; Tax Law 1909, pp. 123-145; Laws of 1911, pp. 1958, 2124.*)

- § 930. Transfers Subject to Tax.
- § 931. Exceptions and Limitations.
- § 932. Rate of Taxation.
- § 933. Accrual and Payment of Tax.
- § 934. Discount and Interest.
- § 935. Collection of Tax by Executors—Lien.
- § 936. Refund of Tax Erroneously Paid.
- § 937. Devises and Bequests in Lieu of Commissions.
- § 938. Liability of Certain Corporations to Tax.
- § 939. Jurisdiction of the Surrogate.
- § 940. Appointment of Appraisers, Stenographers and Clerks.
- § 941. Proceedings by Appraiser.
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- § 944. Composition of Transfer Tax upon Certain Estates.
- § 945. Surrogates' Assistants in New York, Kings and Other Counties.
- § 946. Proceedings by District Attorneys.
- § 947. Receipts from County Treasurer or Controller.
- § 948. Fees of County Treasurer.
- § 949. Books and Forms to be Furnished by the State Controller.
- § 950. Reports of Surrogate and County Clerk.
- § 951. Reports of County Treasurer.
- § 952. Report of State Controller—Payment of Taxes—Refunds in Certain Cases.
- § 953. Application of Taxes.
- § 954. Definitions.
- § 955. Exemptions in Article One not Applicable.
- § 956. Limitation of Time.

#### § 930. Transfers Subject to Tax.

Sec. (230.) A tax shall be and is hereby imposed upon the transfer of any tangible property within the state and of intangible property, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations in the following cases, subject to the exemptions and limitations hereinafter prescribed:

When the transfer is by will or by the intestate laws of this state of any intangible property, or of tangible property within the state, from any person dying seised or possessed thereof while a resident of the state.

When the transfer is by will or intestate law, of tangible property within the state, and the decedent was a nonresident of the state at the time of his death.

Whenever the property of a resident decedent, or the property of a non-resident decedent within this state, transferred by will is not specifically bequeathed or devised, such property shall, for the purposes of this article, be deemed to be transferred proportionately to and divided pro rata among all the general legatees and devisees named in said decedent's will, including all transfers under a residuary clause of such will.

When the transfer is of intangible property, or of tangible property within the state, made by a resident, or of tangible property within the state made by a nonresident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor or intended to take effect in possession or enjoyment at or after such death.

When any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer whether made before or after the passage of this chapter.

Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this chapter, such appointment when made shall be deemed a transfer taxable under the provisions of this chapter in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will.

The tax imposed hereby shall be upon the clear market value of such property, at the rates hereinafter prescribed. (Tax Laws 1911, p. 1958.)

#### § 931. Exceptions and Limitations.

Sec. (231.) Any property devised or bequeathed for religious ceremonies, observances or commemorative services of or for the deceased donor, or to any person who is a bishop or to any religious, educational, charitable, missionary, benevolent, hospital or infirmary corporation, wherever incorporated, including corporations organized exclusively for Bible or tract purposes shall be exempted from and not subject to the provisions of this article. There shall also be exempted from and not subject to the provisions of this article personal property other than money or securities bequeathed to a corporation or association wherever incorporated or located, organized exclusively for the moral or mental improvement of men or women or for scientific, literary, library, patriotic, cemetery or historical purposes or for the enforcement of laws relating to children or animals or for two or more of such purposes and used exclusively for carrying out one or more of such purposes. But no such corporation or association shall be entitled to such exemption if any officer, member or employee thereof shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof except reasonable compensation for services in effecting one or more of such purposes or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof for any such avowed purpose be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association or for any of its members or employees or if it be not in good faith organized or conducted exclusively for one or more of such purposes. (Tax Laws 1909, p. 124; Laws 1911, p. 1959.)



**§ 932. Rate of Taxation.**

Sec. (231a.) Upon a transfer taxable under this article of property or any beneficial interest therein, of an amount in excess of the value of five thousand dollars to any father, mother, husband, wife, child, brother, sister, wife or widow of a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of this state, of the decedent, grantor, donor, or vendor, or to any child to whom any such decedent, grantor, donor, or vendor for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter, or to any lineal descendant of such decedent, grantor, donor, or vendor born in lawful wedlock, the tax on such transfer shall be at the rate of

One per centum on any amount in excess of five thousand dollars up to the sum of fifty thousand dollars.

Two per centum on any amount in excess of fifty thousand dollars up to the sum of two hundred and fifty thousand dollars.

Three per centum on any amount in excess of two hundred and fifty thousand dollars up to the sum of one million dollars.

Four per centum on any amount in excess of one million dollars.

Upon a transfer taxable under this article of property or any beneficial interest therein of an amount in excess of the value of one thousand dollars to any person or corporation other than those enumerated in paragraph one of this section, the tax shall be at the rate of

Five per centum on any amount in excess of one thousand dollars up to the sum of fifty thousand dollars.

Six per centum on any amount in excess of fifty thousand dollars up to the sum of two hundred and fifty thousand dollars.

Seven per centum on any amount in excess of two hundred and fifty thousand dollars up to the sum of one million dollars.

Eight per centum on any amount in excess of one million dollars. (Laws 1911, p. 1960.)

**§ 933. Accrual and Payment of Tax.**

Sec. (232.) All taxes imposed by this article shall be due and payable at the time of the transfer, except as herein otherwise provided. Taxes upon the transfer of any estate, property or interest therein limited, conditioned, dependent or determinable upon the happening of any contingency or future event by reason of which the fair market value thereof cannot be ascertained at the time of the transfer as herein provided, shall accrue and become due and payable when the persons or corporations beneficially entitled thereto shall come into actual possession or enjoyment thereof. Such tax shall be paid to the state controller in a county in which the office of appraiser is salaried, and in other counties, to the county treasurer, and said state controller or county treasurer shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of such payment as provided in section two hundred and thirty-six. (Tax Laws 1909, p. 126.)

**§ 934. Discount and Interest.**

Sec. (233.) If such tax is paid within six months from the accrual thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accrual thereof, interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued; unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax cannot be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten per centum shall be charged. (Tax Laws 1909, p. 126.)

**§ 935. Collection of Tax by Executor—Idem.**

Sec. (234.) Every such tax shall be and remain a lien upon the property transferred until paid and the person to whom the property is so transferred, and the executors, administrators and trustees of every estate so transferred shall be personally liable for such tax until its payment. Every executor, administrator or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such executor, administrator or trustee having in charge or in trust any legacy or property for distribution subject to such tax shall deduct the tax therefrom and shall pay over the same to the state controller or county treasurer, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this article to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the executor, administrator or trustee, and the tax shall remain a lien or charge on such real property until paid; and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the legacy might be enforced, or by the district attorney under section two hundred and thirty-five (sec. 5) of this chapter. If any such legacy shall be given in money to any such person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him, to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require. (Tax Laws 1909, p. 127.)

**§ 936. Refund of Tax Erroneously Paid.**

Sec. (235.) If any debts shall be proven against the estate of a decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by

order of the surrogate having jurisdiction, on notice to the state controller, to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee, if the tax has not been paid to the state controller or county treasurer; or if such tax has been paid to such state controller or county treasurer, such officer shall refund out of the funds in his hands or custody to the credit of such taxes such equitable proportion of the tax, and credit himself with the same in the account required to be rendered by him under this article. If after the payment of any tax in pursuance of an order fixing such tax, made by the surrogate having jurisdiction, such order be modified or reversed by the surrogate having jurisdiction within two years from and after the date of entry of the order fixing the tax, or be modified or reversed at any time on an appeal taken therefrom within the time allowed by law on due notice to the state controller, the state controller shall, if such tax was paid in a county in which the office of appraiser is salaried, refund to the executor, administrator, trustee, person or persons by whom such tax was paid, the amount of any moneys paid or deposited on account of such tax in excess of the amount of the tax fixed by the order modified or reversed, out of the funds in his hands or custody to the credit of such taxes, and to credit himself with the same in the account required to be rendered by him under this article, or if paid in a county in which the office of appraiser is not salaried, he shall by warrant direct and allow the county treasurer of the county to refund such amount in the same manner; but no application for such refund shall be made after one year from such reversal or modification, unless an appeal shall be taken therefrom, in which case no such application shall be made after one year from the final determination on such appeal or of an appeal taken therefrom, and the representatives of the estate, legatees, devisees or distributees entitled to any refund under this section shall not be entitled to any interest upon such refund, and the state controller shall deduct from the fees allowed by this article to the county treasurer the amount theretofore allowed him upon such overpayment. Where it shall be proved to the satisfaction of the surrogate that deductions for debts were allowed upon the appraisal, since proved to have been erroneously allowed, it shall be lawful for such surrogate to enter an order assessing the tax upon the amount wrongfully or erroneously deducted. This section, as amended, shall apply to appeals and proceedings now pending and taxes heretofore paid in relation to which the period of one year from such reversal or modification has not expired when this section, as amended, takes effect. This act shall take effect immediately. (Tax Laws 1909, p. 128; Laws 1911, p. 723.)

**§ 937. Devises and Bequests in Lieu of Commissions.**

Sec. (236.) If a testator bequeaths or devises property to one or more executors or trustees in lieu of their commissions or allowances, or makes them his legatees to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed or devised above the amount of commissions or allowances prescribed by law in similar cases shall be taxable under this article. (Tax Laws 1909, p. 129.)

**§ 938. Liability of Certain Corporations to Tax.**

Sec. (237.) If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the state controller or the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or nonresident, or belonging to, or standing in the joint names of such decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the state controller at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution, making the delivery or transfer, under the provisions of this article, unless the state controller consents thereto in writing. And it shall be lawful for the said state controller, personally or by representative, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of not less than five or more than twenty-five thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in an action brought by the state controller in any court of competent jurisdiction. (Tax Laws 1909, p. 129.)

**§ 939. Jurisdiction of the Surrogate.**

Sec. (238.) The surrogate's court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate

of a decedent whose property is chargeable with any tax under this article, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this article, and to do any act in relation thereto authorized by law to be done by a surrogate in other matters or proceedings coming within his jurisdiction; and if two or more surrogates' courts shall be entitled to exercise any such jurisdiction, the surrogate first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other surrogate. Every petition for ancillary letters testamentary or ancillary letters of administration made in pursuance of the provisions of article seven, title three, chapter eighteen of the Code of Civil Procedure shall set forth the name of the state controller as a person to be cited as therein prescribed, and a true and correct statement of all the decedent's property in this state and the value thereof; and upon the presentation thereof the surrogate shall issue a citation directed to the state controller; and upon the return of the citation the surrogate shall determine the amount of the tax which may be or become due under the provisions of this article and his decree awarding the letters may contain any provision for the payment of such tax or the giving of security therefor which might be made by such surrogate if the state controller were a creditor of the decedent. (Tax Laws 1909, p. 130.)

**§ 940. Appointment of Appraisers, Stenographers and Clerks.**

Sec. (239.) The state controller shall appoint and may at pleasure remove not to exceed six persons in the county of New York, four persons in the county of Kings, and one person in the counties of Albany, Dutchess, Erie, Monroe, Nassau, Niagara, Oneida, Onondaga, Orange, Queens, Rensselaer, Richmond, Suffolk and Westchester, to act as appraisers therein. The state controller, from time to time and whenever in his opinion it is necessary, may also appoint and at pleasure remove not to exceed two additional persons to act as transfer tax appraisers in the county of New York, to whom shall be referred the appraisal of delinquent estates pending before the transfer appraisers in New York county, where more than eighteen months have elapsed since the death of such decedents, respectively, and also to act as appraiser of other estates whenever it shall appear to the controller that the services of such additional appraiser is necessary. The appraiser so appointed shall receive an annual salary to be fixed by the state controller, together with their actual and necessary traveling expenses and witness fees, as hereinafter provided, payable monthly by the state controller out of any funds in his hands or custody on account of transfer tax. The salaries of each of the appraisers so appointed shall not exceed the following amounts: In New York county, four thousand dollars; in Kings county, four thousand dollars; in Erie and Queens counties, three thousand dollars; in Westchester and Albany counties, three thousand dollars; in Nassau county, two thousand dollars; in Monroe and Onondaga counties, one thousand five hundred dollars; in Dutchess, Niagara, Oneida, Orange, Rensselaer, Richmond and Suffolk counties, one thousand dollars. Each of the said appraisers shall file with the state controller his oath of office and his official bond in the penal

sum of not less than one thousand dollars, in the discretion of the state controller, conditioned for the faithful performance of his duties as such appraiser, which bond shall be approved by the attorney general and the state controller. The state controller shall retain out of any funds in his hands on account of said tax the following amounts: First, a sum sufficient to provide the appraisers of New York county with nine stenographers, three clerks, one examiner of values, and one assistant examiner of values, and the appraisers of Kings county with four stenographers, whose salaries shall not exceed two thousand dollars a year each; also the appraisers of Kings county with one junior clerk, whose salary shall not exceed six hundred dollars a year; one page, whose salary shall not exceed four hundred and eighty dollars a year, and the appraiser of Erie county with one clerk, whose salary shall not exceed fifteen hundred dollars a year, and the appraiser of Westchester county with one clerk, whose salary shall not exceed the sum of twelve hundred dollars a year, and the appraiser of Queen county with one clerk, whose salary shall not exceed the sum of twelve hundred dollars a year, such employees to be appointed by the state controller. The state controller shall also retain out of any funds in his hands on account of said tax a sum sufficient to provide each of the additional transfer tax appraisers in New York county, whenever appointed as hereinbefore provided, with a stenographer, whose salary shall not exceed the rate of two thousand dollars a year each, such employees to be appointed by the state controller. Second, a sum to be used in defraying the expenses for office rent, stationery, postage, process serving and other similar expenses necessarily incurred in the appraisal of estates, not exceeding ten thousand five hundred dollars a year in New York county and five thousand dollars a year in Kings county. Third, a sum not exceeding ten thousand dollars to be used in defraying the expenses for extra clerical and stenographic services in the transfer tax bureau of the controller's office at Albany, during the period ending September thirtieth, nineteen hundred and eleven. This act shall take effect immediately. (Tax Laws 1909, p. 131; Laws 1911, p. 2124.)

#### § 941. Proceedings by Appraiser.

Sec. (240.) In each county in which the office of appraiser is not salaried the county treasurer shall act as appraiser. The surrogate, either upon his own motion, or upon the application of any interested person, including the state controller, shall by order direct the person or one of the persons appointed pursuant to section two hundred and twenty-nine (sec. 10) of this article in counties in which the office of appraiser is salaried, and in other counties, the county treasurer, to fix the fair market value of property of persons whose estates shall be subject to the payment of any tax imposed by this article.

Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the state controller, and to such persons as the surrogate may by order direct, of the time and place when he will appraise such property. He shall at such time and place appraise the same at its fair market value as herein prescribed; and for that purpose the said appraiser is authorized to issue

subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing, to the said surrogate, together with the depositions of the witnesses examined, and such other facts in relation thereto and to said matter as the surrogate may order or require. Every appraiser, except in the counties in which the office of appraiser is salaried, for which provision is hereinbefore made, shall be paid by the state controller and after the audit of said state controller, his actual and necessary traveling expenses and the fees paid such witnesses, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record, payment to be made out of funds in the hands of the county treasurer of the proper county on account of the tax imposed under the provisions of this article.

The value of every future or limited estate, income, interest or annuity dependent upon any life or lives in being, shall be determined by the rule, method and standard of mortality and value employed by the superintendent of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies, except that the rate of interest for making such computation shall be five per centum per annum.

In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made on account of any contingent encumbrance thereon, nor on account of any contingency upon the happening of which the estate or property, or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such encumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgment, defeat or diminution of said estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax on account of the encumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section two hundred and twenty-five (sec. 6) of this article.

Where any property shall, after the passage of this chapter, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this article in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interests is derived.

When property is transferred in trust or otherwise, and the rights, interest or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the

happening of any of the said contingencies or conditions, would be possible under the provisions of this article, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred, and the surrogate shall enter a temporary order determining the amount of said tax in accordance with this provision; provided however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this article, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this article; and the executor or trustee of each estate, or the legal representative having charge of the trust fund, shall immediately upon the happening of said contingencies or conditions apply to the surrogate of the proper county, upon a verified petition setting forth all the facts, and giving at least ten days' notice by mail to all interested persons or corporations, for an order modifying the temporary taxing order of said surrogate so as to provide for the final assessment and determination of the tax in accordance with the ultimate transfer or devolution of said property. Such return of overpayment shall be made in the manner provided by section two hundred and twenty-five (sec. 6) of this article.

Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

The report of the appraiser shall be made in duplicate, one of which duplicates shall be filed in the office of the surrogate and the other in the office of the state controller. (Tax Laws 1909, p. 132; Laws 1911, p. 2113.)

#### **§ 942. Determination of Surrogate.**

Sec. (241.) From such report of appraisal and other proof relating to any such estate before the surrogate, the surrogate shall forthwith, as of course, determine the cash value of all estates and the amount of tax to which the same are liable; or the surrogate may so determine the cash value\* of all such estates and the amount of tax to which the same are liable, without appointing an appraiser.

The superintendent of insurance shall, on the application of any surrogate, determine the value of any such future or contingent estates, income or interest therein limited, contingent, dependent or determinable upon the life or lives of persons in being, upon the facts contained in any such appraiser's



report, and certify the same to the surrogate, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct.

The surrogate shall immediately give notice, upon the determination by him as to the value of any estate which is taxable under this article, and of the tax to which it is liable, to all persons known to be interested therein, and shall immediately forward a copy of such taxing order to the state controller. The surrogate shall also forward to the state controller copies of all orders entered by him in relation to or affecting in any way the transfer tax on any estate, including orders of exemption.

If, however, it appears at any stage of the proceedings that any of such persons known to be interested in the estate is an infant or an incompetent, the surrogate may, if the interest of such infant or incompetent is presently involved and is adverse to that of any of the other persons interested therein, appoint a special guardian of such infant; but nothing in this provision shall affect the right of an infant over fourteen years of age or of anyone on behalf of an infant under fourteen years of age to nominate and apply for the appointment of a special guardian for such infant at any stage of the proceedings. (Tax Laws 1909, p. 135.)

#### § 943. Appeal and Other Proceedings.

Sec. (242.) The state controller or any person dissatisfied with the appraisement or assessment and determination of tax may appeal therefrom to the surrogate within sixty days from the fixing, assessing and determination of tax by the surrogate as herein provided, upon filing in the office of the surrogate a written notice of appeal, which shall state the grounds upon which the appeal is taken; but no costs shall be allowed by the surrogate on such appeal.

Within two years after the entry of an order or decree of a surrogate determining the value of an estate and assessing the tax thereon, the state controller may, if he believes that such appraisal, assessment or determination has been fraudulently, collusively or erroneously made, make application to a justice of the supreme court of the judicial district embracing the surrogate's court in which the order or decree has been filed, for a reappraisal thereof. The justice to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers and be subject to the duties of an appraiser under section two hundred and thirty (sec. 11) and shall receive compensation at the rate of five dollars per day for every day actually and necessarily employed in such appraisal. Such compensation shall be payable by the state controller or county treasurer out of any funds he may have on account of any tax imposed under the provisions of this article, upon the certificate of the justice appointing him. The report of such appraiser shall be filed with the justice by whom he was appointed, and thereafter the same proceedings shall be taken and had by and before such justice as are herein provided to be taken and had by and before the surrogate. The determination and assessment of such justice shall supersede the determination and assessment of the surrogate, and shall be filed by such justice in the office

of the state controller, and a certified copy thereof transmitted to the surrogate's court of the proper county. (Tax Laws 1909, p. 136.)

**§ 944. Composition of Transfer Tax upon Certain Estates.**

Sec. (243.) The state controller, by and with the consent of the attorney general expressed in writing, is hereby empowered and authorized to enter into an agreement with the trustees of any estate in which remainders or expectant estates have been of such a nature, or so disposed and circumstanced, that the taxes therein were held not presently payable, or where the interests of the legatees or devisees were not ascertainable under the provisions of chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five; chapter three hundred and ninety-nine of the laws of eighteen hundred and ninety-two, or chapter nine hundred and eight of the laws of eighteen hundred and ninety-six; and the several acts amendatory thereof and supplemental thereto; and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said trustees upon the payment of the taxes provided for in such composition, provided, however, that no such composition shall be conclusive in favor of said trustees as against the interest of such cestuis que trust as may possess either present rights of enjoyment, or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto, either personally, when competent, or by guardian or committee. Composition or settlement made or effected under the provisions of this section shall be executed in triplicate, and one copy filed in the office of the state controller, one copy in the office of the surrogate of the county in which the tax was paid, and one copy delivered to the executors, administrators or trustees who shall be parties thereto. (Tax Laws 1909, p. 137.)

**§ 945. Surrogates' Assistants in New York, Kings and Other Counties.**

Sec. (244.) The state controller may, upon the recommendation of the surrogate, appoint, and may at pleasure remove, assistants and clerks in the surrogate's offices of the following counties, at annual salaries to be fixed by him not to exceed the amounts hereinafter specified:

In New York county, a transfer tax assistant, five thousand dollars; a transfer tax clerk, two thousand four hundred dollars; an assistant clerk, eighteen hundred dollars; a recording clerk, thirteen hundred dollars; a stenographer, eight hundred dollars; and shall be entitled to expend not more than seven hundred and fifty dollars a year in such office for expenses necessarily incurred in the assessment and collection of taxes under this article.

In Kings county, a transfer tax assistant, four thousand dollars; a transfer tax clerk, two thousand dollars; an assistant clerk, fifteen hundred dollars; and shall be entitled to expend not more than five hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article.

In Erie county, a transfer tax clerk, eighteen hundred dollars.

In Westchester county, a transfer tax assistant, two thousand five hundred dollars.

In Albany county, a transfer tax clerk, one thousand dollars.

In Queens county, a transfer tax clerk, fifteen hundred dollars.

In Onondaga county, a transfer tax clerk, twelve hundred dollars.

In Monroe county, two transfer tax clerks, seven hundred and fifty dollars each; and shall be entitled to expend not more than two hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article.

In Dutchess county, a transfer tax clerk, nine hundred dollars.

In Oneida county, not more than two transfer tax clerks, twelve hundred dollars in the aggregate.

In Suffolk county, a transfer tax clerk, one thousand dollars.

In Ulster county, a transfer tax clerk, seven hundred and twenty dollars.

In Richmond county, a transfer tax clerk, one thousand dollars.

In Nassau county, a transfer tax clerk, twelve hundred dollars.

Such salaries and expenses shall be paid monthly by the state controller, upon proper vouchers, out of any funds in his hands on account of taxes collected under this article. (Tax Laws 1909, p. 138; Laws 1911, pp. 1777, 1979, 2531.)

#### § 946. Proceedings by District Attorneys.

Sec. (245.) If, after the expiration of eighteen months from the accrual of any tax under this article, such tax shall remain due and unpaid, after the refusal or neglect of the persons liable therefor to pay the same, the state controller shall notify the district attorney of the county, in writing, of such failure or neglect, and such district attorney shall apply to the surrogate's court for a citation, citing the persons liable to pay such tax to appear before the court on the day specified, not more than three months after the date of such citation, and show cause why the tax should not be paid. The surrogate, upon such application, and whenever it shall appear to him that any such tax accruing under this article has not been paid as required by law, shall issue such citation, and the service of such citation, and the time, manner and proof thereof, and the hearing and determination thereon and the enforcement of the determination or order made by the surrogate shall conform to the provisions of the code of civil procedure for the service of citations out of the surrogate's court, and the hearing and determination thereon and its enforcement so far as the same may be applicable. The surrogate or his clerk shall, upon request of the district attorney or the state controller, furnish, without fee, one or more transcripts of such decree, which shall be docketed and filed by the county clerk of any county of the state without fee, in the same manner and with the same effect as provided by law for filing and docketing transcripts of decrees of the surrogate's court. The costs awarded by any such decree after the collection and payment of the tax to the state controller or county treasurer may be retained by the district attorney for his own use. Such costs shall be fixed by the surrogate in his discretion, but shall not exceed in any case where there has not been a contest, the sum of one hundred dollars, or where there has been a contest, the sum of two

hundred and fifty dollars. Whenever the surrogate shall certify that there was probable cause for issuing a citation and taking the proceedings specified in this section, the state controller, after the same shall have been audited by him, shall pay all expenses incurred for the service of citations and other lawful disbursements not otherwise paid, from funds in his hands on account of such tax, or in a county in which the office of appraiser is not salaried, by a warrant upon the county treasurer of such county for the payment by him of the same from funds in his hands on account of such tax. In proceedings to which the state controller is cited as a party under sections two hundred and twenty-eight (sec. 9) and two hundred and thirty (10) of this article, he is authorized to designate and retain counsel to represent him and to pay the expenses thereby incurred out of the funds which may be in his hands on account of this tax in any case in a county where the office of appraiser is salaried, and in any other county the state controller shall by warrant direct the county treasurer to pay such expenses out of any funds which may be in his hands on account of this tax; provided, however, that in the collection of taxes upon estates of nonresident decedents the state controller shall not allow for legal services up to and including the entry of the order of the surrogate fixing the tax a sum exceeding ten per centum of the taxes and penalties collected. (Tax Laws 1909, p. 139.)

#### § 947. Receipts from County Treasurer or Controller.

Sec. (246.) One of the duplicate receipts issued for the payment of any tax under this article, as provided by section two hundred and twenty-two (sec. 3), shall be countersigned by the state treasurer if the same was issued by the state controller, and by the state controller if issued by any county treasurer. The officer so countersigning the same shall charge the officer receiving the tax with the amount thereof and affix the seal of his office to the same and return to the proper person; but no executor, administrator or trustee shall be entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of this article unless he shall produce a receipt so sealed and countersigned, or a certified copy thereof. Any person shall, upon the payment of fifty cents to the officer issuing such receipt, be entitled to a duplicate thereof, to be signed, sealed and countersigned in the same manner as the original.

Any person shall, upon the payment of fifty cents, be entitled to a certificate of the state controller that the tax upon the transfer of any real estate of which any decedent died seised has been paid, such certificate to designate the real property upon which such tax is paid, the name of the person so paying the same, and whether in full of such tax. Such certificate may be recorded in the office of the county clerk or register of the county where such real property is situate, in a book to be kept by him for that purpose, which shall be labeled "transfer tax." (Tax Laws 1909, p. 141.)

#### § 948. Fees of County Treasurer.

Sec. (247.) The treasurer of each county in which the office of appraiser is not salaried shall be allowed to retain, on all taxes paid and accounted

for by him each fiscal year under this article, five per centum on the first fifty thousand dollars, two and one-half per centum on the next fifty thousand dollars, and one per centum on all additional sums. Such fees shall be in addition to the salaries and fees now allowed by law to such officers. (Tax Laws 1909, p. 141.)

**§ 949. Books and Forms to be Furnished by the State Controller.**

Sec. (248.) The state controller shall furnish to each surrogate a book, which shall be a public record, and in which he shall enter the name of every decedent upon whose estate an application to him has been made for the issue of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent, the estimated value of his real and personal property, the names, place of residence and relationship to him of his heirs at law, the names and places of residence of the legatees and devisees in any will of any such decedent, the amount of each legacy and the estimated value of any real property devised therein, and to whom devised. These entries shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of the decedent. The surrogate shall also enter in such book the amount of the personal property of any such decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by any appraiser appointed by him under this article, and the value of annuities, life estates, terms of years, and other property of any such decedent or given by him in his will or otherwise, as fixed by the surrogate, and the tax assessed thereon, and the amounts of any receipts for payment of any tax on the estate of such decedent under this article filed with him. The state controller shall also furnish to each surrogate forms for the reports to be made by such surrogate, which shall correspond with the entries to be made in such book. (Tax Laws 1909, p. 142.)

**§ 950. Reports of Surrogate and County Clerk.**

Sec. (249.) Each surrogate shall, on January, April, July and October first of each year, make a report, upon the forms furnished by the controller containing all the data and matters required to be entered in such book, which shall be immediately forwarded to the state controller. The county clerk of each county, except in the counties where the registers perform the duties of the county clerk with respect to the recording of deeds, and when in such counties the registers, shall, at the same time, make reports containing a statement of any deed or other conveyance filed or recorded in his office, of any property, which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor, with the name and place of residence of such grantor or vendor, the name and place of residence of the grantee or vendee, and a description of the property transferred, which shall be immediately forwarded to the state controller. (Tax Laws 1909, p. 142.)

**§ 951. Reports of County Treasurer.**

Sec. (250.) Each county treasurer in a county in which the office of appraiser is not salaried shall make a report, under oath, to the state con-

troller, on January, April, July and October first of each year, of all taxes received by him under this article, stating for what estate and by whom and when paid. The form of such report may be prescribed by the state controller. He shall, at the same time, pay the state treasurer all taxes received by him under this article and not previously paid into the state treasury, except as provided in the next section, and for all such taxes collected by him and not paid into the state treasury within thirty days from the times herein required, he shall pay interest at the rate of ten per centum per annum. (Tax Laws 1909, p. 143; Laws 1911, p. 2116.)

**§ 952. Report of State Controller—Payment of Tax—Refunds in Certain Cases.**

Sec. (251.) The state controller shall deposit all taxes collected by him under this article, except as hereinafter otherwise provided, in a responsible bank, banking-house or trust company in the city of Albany, which shall pay the highest rate of interest to the state for such deposit, to the credit of the state controller on account of the transfer tax. And every such bank, banking-house or trust company shall execute and file in his office an undertaking to the state, in the sum, and with such sureties, as are required and approved by the controller, for the safe keeping and prompt payment on legal demand therefor of all such moneys held by or on deposit in such bank, banking-house or trust company, with interest thereon on daily balances at such rate as the controller may fix. Every such undertaking shall have indorsed thereon, or annexed thereto, the approval of the attorney general as to its form. The state controller shall on the first day of each month make a verified return to the state treasurer of all taxes received by him under this article, stating for what estate, and by whom and when paid; and shall credit himself with all expenditures made since his last previous return on account of such taxes, for salary, refunds or other purposes lawfully chargeable thereto. He shall on or before the tenth day of each month pay to the state treasurer the balance of such taxes remaining in his hands at the close of business on the last day of the previous month, as appears from such returns.

Whenever the tax on a contingent remainder has been determined at the highest rate which on the happening of any of said contingencies or conditions would be possible under the provisions of this article, the state controller, in the counties wherein this tax is payable direct to him, and in all other counties the treasurer of said counties, respectively, when such tax is paid shall retain and hold to the credit of said estate so much of the tax assessed upon such contingent remainders as represents the difference between the tax at the highest rate and the tax upon such remainders which would be due if the contingencies or conditions had happened at the date of the appraisal of said estate, and the state controller or the county treasurer shall deposit the amount of tax so retained in some solvent trust company or trust companies or savings banks in this state, to the credit of such estate, paying the interest thereon when collected by him to the executor or trustee of said estate, to be applied by said executor or trustee as provided by the decedent's will. Upon the happen-

ing of the contingencies or conditions whereby the remainder ultimately vests in possession, if the remainder then passes to persons taxable at the highest rate, the state controller or the county treasurer shall turn over the amount so retained by him to the state treasurer as provided herein and by section two hundred and forty (sec. 21) of this article, or if the remainder ultimately vests in persons taxable at a lower rate or a person or corporation exempt from taxation by the provisions of this article, the state controller or the county treasurer shall refund any excess of tax so held by him to the executor or trustee of the estate, to be disposed of by said executor or trustee as provided by the decedent's will. Executors or trustees of any estate may elect to assign to and deposit with the state controller or the county treasurer, bonds or other securities of the estate approved by the state controller, or the county treasurer, both as to the form of the collateral and the amount thereof, for the purpose of securing the payment of the difference between the tax on said remainder at the highest rate and the tax upon said remainder which would be due if the contingencies or conditions had happened at the date of the appraisal of said estate, and cash for the balance of said tax as assessed, which said bonds or other securities shall be held by the state controller, or the county treasurer, to the credit of said estate until the actual vesting of said remainders, the income therefrom when received by the state controller or the county treasurer to be paid over to the executor or trustee during the continuance of the trust estates and then to be finally disposed of in accordance with the ultimate transfer or devolution of said remainders as hereinbefore provided; and it shall be the duty of the executors or trustees of such estates to forthwith notify the state controller of the actual vesting of all such contingent remainders.

If any executor or trustee shall have deposited with the state controller, or the county treasurer, cash securities, or both cash and securities, to an amount in excess of the sum necessary to pay the transfer tax upon such contingent remainders at the highest rate as aforesaid, the excess of tax so deposited shall be returned to the executor or trustee, or if any executor or trustee shall have deposited with the state controller, or the county treasurer, cash or securities, or both cash and securities, to an amount less than is sufficient to pay the tax upon such contingent remainders as finally assessed and determined, the executor or trustee of said estate shall forthwith, upon the entry of the order determining the correct amount of tax due, pay to the state controller, or the county treasurer, whichever is entitled under the provisions of this article to receive the tax, the balance due on account of said tax. (Tax Laws 1909, p. 143; Laws 1911, p. 2117.)

#### § 953. Application of Taxes.

Sec. (252.) All taxes levied and collected under this article when paid into the treasury of the state shall be applicable to the expenses of the state government and to such other purposes as the legislature shall by law direct. (Tax Laws 1909, p. 144.)

**§ 954. Definitions.**

Sec. (253.) The words "estate" and "property," as used in this article, shall be taken to mean the property or interest therein passing or transferred to individual or corporate legatees, devisees, heirs, next of kin, grantees, donees or vendees, and not as the property or interest therein of the decedent, grantor, donor or vendor and shall include all property or interest therein, whether situated within or without this state. The words "tangible property" as used in this article shall be taken to mean corporeal property such as real estate and goods, wares and merchandise, and shall not be taken to mean money, deposits in bank, shares of stock, bonds, notes, credits or evidences of an interest in property and evidences of debt. The words "intangible property" as used in this article shall be taken to mean incorporeal property, including money, deposits in bank, shares of stock, bonds, notes, credits, evidences of an interest in property and evidences of debt. The word "transfer," as used in this article, shall be taken to include the passing of property or any interest therein in the possession of enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift, in the manner herein prescribed. The words "county treasurer" and "district attorney," as used in this article, shall be taken to mean the treasurer of the district attorney of the county of the surrogate having jurisdiction as provided in section two hundred and twenty-eight (sec. 9) of this article. The words "the intestate laws of this state," as used in this article, shall be taken to refer to all transfers of property, or any beneficial interest therein, effected by the statute of descent and distribution and the transfer of any property, or any beneficial interest therein, effected by operation of law upon the death of a person omitting to make a valid disposition thereof, including a husband's right as tenant by the curtesy or the right of a husband to succeed to the personal property of his wife who dies intestate leaving no descendants her surviving. (Tax Laws 1909, p. 144; Laws 1911, p. 1961.)

**§ 955. Exemptions in Article One not Applicable.**

Sec. (254.) The exemptions enumerated in section four [this "section four" enumerates properties exempt from general taxation] of this chapter shall not be construed as being applicable in any manner to the provisions of this article. (Tax Laws 1909, p. 144.)

**§ 956. Limitation of Time.**

Sec. (255.) The provisions of the Code of Civil Procedure relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty prescribed by this article, and this section shall be construed as having been in effect as of date of the original enactment of the inheritance tax law, provided, however, that as to real estate in the hands of bona fide purchasers, the transfer tax shall be presumed to be paid and cease to be a lien as against such purchasers after the expiration of six years from the date of accrual. (Tax Law 1909, p. 145.)



## CHAPTER XLV.

### NORTH CAROLINA STATUTE.

(*§ PeU's Revision, 1908, pp. 2448-2454; Laws of 1909, pp. 656-662.*)

- § 957. Transfers Subject to Tax—Rate of Taxation.
- § 958. Persons Liable for Tax.
- § 959. Interest on Tax.
- § 960. Collection of Tax by Executor.
- § 961. Estates for Life or Term of Years or upon Contingency.
- § 962. Legacies Charged upon Real Estate.
- § 963. Receipts and Vouchers.
- § 964. Transfers of Stocks or Bonds by Foreign Executor.
- § 965. Refunding Tax When Debts Proved After Distribution.
- § 966. Appraisers and Appraisement.
- § 967. Appraiser Taking More Than Legal Fees—Penalty.
- § 968. Records to be Kept by Clerk of Court.
- § 969. Proceedings in Case of Delinquencies.
- § 970. Compensation of Clerk of Court.
- § 971. Liability of Clerk of Court.
- § 972. Returns to be Made by Clerk of Court.

#### § 957. Transfers Subject to Tax—Rate of Taxation.

Sec. 6. From and after the passage of this act, all real and personal property of whatever kind and nature which shall pass by will or by the intestate laws of this state from any person who may die seised or possessed of the same while a resident of this state, whether the person or persons dying seised thereof be domiciled within or out of the state, or if the decedent was not a resident of this state at the time of his death, such property or any part thereof within this state, or any interest therein or income therefrom which shall be transferred by deed, grant, sale or gift, made in contemplation of the death of the grantor, bargainor, donor or assignor, or intended to take effect, in possession or enjoyment after such death, to any person or persons or to bodies corporate or politic, in trust or otherwise, or by reason whereof any person or body corporate or politic shall become beneficially entitled in possession or expectancy to any property or the income thereof, shall be and hereby is made subject to a tax for the benefit of the state, as follows, that is to say: Where the whole amount of said legacy or distributive share of personal property shall exceed in value two thousand dollars and all in excess of two thousand dollars the tax shall be:

First. Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue or lineal ancestor, brother or sister of the person who died possessed of such property aforesaid, or where the person to whom such property shall be devised or bequeathed stood in the relation of child to the person who died possessed of such property aforesaid, at the rate of seventy-five cents for each and every hundred dollars

of the clear value of such interest in such property; and this clause shall apply to all cases where the taxes have not been paid by the executor or administrator or other representative of the deceased person. The clerk of the superior court shall determine whether any person to whom property is so devised or bequeathed stands in the relation of child to the decedent.

Second. Where the person or persons entitled to any beneficial interest in such property shall be the descendant of a brother or sister of the person who died possessed as aforesaid, at the rate of one dollar and fifty cents for each and every hundred dollars of the clear value of such interest.

Third. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother, or a descendant of the brother or sister of the father or mother of the person who died possessed as aforesaid, at the rate of three dollars for each and every hundred dollars of the clear value of such interest.

Fourth. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother of the person who died possessed as aforesaid, at the rate of four dollars for each and every hundred dollars of the clear value of such interest.

Fifth. Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the person who died possessed as aforesaid, or shall be a body politic or corporate, where the whole amount of said legacy or distributive share of personal property shall exceed two thousand dollars and shall not exceed five thousand dollars, the tax shall be at the rate of five dollars for each and every hundred dollars of the clear value of such interest; provided, that all legacies or property passing by will or by the laws of this state to husband or wife of the person who died possessed as aforesaid, or for religious, charitable or educational purposes, shall be exempt from tax or duty. Where the amount or value of said property shall exceed the sum of five thousand dollars, but shall not exceed the sum or value of ten thousand dollars, the rates of tax above set forth shall be multiplied by one and one-half; and where the amount or value of said property shall exceed the sum of ten thousand dollars, but shall not exceed the sum of twenty-five thousand dollars, such rates of tax shall be multiplied by two; and where the amount or value of said property shall exceed the sum of twenty-five thousand dollars, but shall not exceed the sum of fifty thousand dollars, such rates of tax shall be multiplied by two and one-half; and where the amount or value of said property shall exceed the sum of fifty thousand dollars, such rates of tax shall be multiplied by three, but this graduated increase of rate shall only apply to the provisions of subdivision five of this section. (Laws 1909, p. 656.)

#### **§ 958. Persons Liable for Tax.**

Sec. 7. All heirs, legatees, devisees, administrators, executors and trustees shall only be discharged from liability for the amount of such taxes,

the settlement of which they may be charged with, by paying the same for the use aforesaid as hereinafter provided. (Laws 1909, p. 658.)

**§ 959. Interest on Tax.**

Sec. 8. That if said tax is not paid at the end of two years after the death of the decedent six per cent per annum shall be charged thereon until same is paid. (Laws 1909, p. 658.)

**§ 960. Collection of Tax by Executor.**

Sec. 9. The executor or administrator or other trustee paying any legacy or share in the distribution of any estate subject to said tax shall deduct therefrom at the rate prescribed, or if the legacy or share in the estate be not money he shall demand payment of a sum to be computed at the same rates upon the appraised value thereof for the use of the state; and no executor or administrator shall be compelled to pay or deliver any specific legacy or article to be distributed, subject to tax, except on the payment into his hands of a sum computed on its value as aforesaid; and in case of neglect or refusal on the part of said legatee to pay the same such specific legacy or article or so much thereof as shall be necessary shall be sold by such executor or administrator at public sale, after notice to such legatee, and the balance that may be left in the hands of the executor or administrator shall be distributed as is or may be directed by law; and every sum of money retained by an executor or administrator or paid into his hands on account of any legacy or distributive share for the use of the state shall be paid by him to the proper officer without delay. (Laws 1909, p. 658.)

**§ 961. Estates for Life or Term of Years or upon Contingency.**

Sec. 10. If the legacy subject to said tax be given to any person for life or for a term of years or for any other limited period, upon a condition or contingency, if the same be money, the tax thereon shall be retained upon the whole amount; but if not money, application shall be made to the court having jurisdiction of the accounts of executors and administrators to make apportionment, if the case requires it, of the sum to be paid by such legatee, and for such further order relative thereto as equity shall require. (Laws 1909, p. 659.)

**§ 962. Legacies Charged upon Real Estate.**

Sec. 11. Whenever such legacy shall be charged upon or payable out of real estate the heir or devisee of such real estate, before paying the same to such legatee, shall deduct therefrom at the rates aforesaid, and pay the amount so deducted to the executor or administrator, and the same shall remain a charge upon such real estate until paid, and in default thereof the same shall be enforced by the decree of the court in the same manner as the payment of such legacy may be enforced; provided, that all taxes imposed by this act shall be a lien upon the personal property of the estate on which the tax is imposed or upon the proceeds arising from the sale of such property, from the time said tax is due and payable, and shall continue

a lien until said tax is paid and receipted for by the proper officer of the state. (Laws 1909, p. 659.)

**§ 963. Receipts and Vouchers.**

Sec. 12. It shall be the duty of any executor or administrator, on the payment of said tax, to take duplicate receipts from the clerk of the court, one of which shall be forwarded forthwith to the auditor of the state, whose duty it shall be to charge the clerk receiving the money with the amount, and seal with the seal of his office and countersign the receipt and transmit it to the executor or administrator, whereupon it shall be a proper voucher in the settlement of the estate, but in no event shall an executor or administrator be entitled to a credit in his account by the clerk unless the receipt is so sealed and countersigned by the auditor of the state. (Laws 1909, p. 659.)

**§ 964. Transfers of Stocks or Bonds by Foreign Executor.**

Sec. 13. Whenever any foreign executor or administrator or trustee shall assign or transfer any stocks or bonds in this state standing in the name of the decedent or in trust for a decedent, which shall be liable for the said tax, such tax shall be paid on the transfer thereof to the clerk of the court of the county where such transfer is made; otherwise the corporation permitting such transfer shall become liable to pay such tax. (Laws 1909, p. 660.)

**§ 965. Refunding Tax When Debts Proved After Distribution.**

Sec. 14. Whenever debts shall be proven against the estate of a decedent, after the distribution of legacies from which the inheritance tax has been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator if the said tax has not been paid into the state treasury, or shall be refunded by the state treasurer if it has been so paid in. (Laws 1909, p. 660.)

**§ 966. Appraisers and Appraisement.**

Sec. 15. It shall be the duty of the clerk of the court of the county in which letters testamentary or of administration are granted to appoint an appraiser, as often as and whenever occasion may require, to fix the valuation of estates which are or shall be subject to inheritance tax, and it shall be the duty of said appraiser to make a fair and conscionable appraisement of such estates; and it shall further be the duty of such appraiser to assess and fix the cash value of all annuities and life estates growing out of said estates, upon which annuities and life estates the inheritance tax shall be immediately payable out of the estate at the rate of such valuation; provided, that any person or persons not satisfied with said appraisement shall have the right to appeal within sixty days to the court of the proper county on paying or giving security to pay all costs, together with whatever tax shall be fixed by said court, and upon such appeal said court shall have jurisdiction to determine all questions of valuation and of the liability of the appraised estate for such tax, subject to the right of appeal to the supreme court as in other

cases. The compensation of appraisers appointed under this act shall be at the rate of three dollars per day for each day necessarily employed in making the appraisement, together with such necessary traveling expenses as may be incurred, a statement of which shall be properly itemized and sworn to, subject to the final approval of the auditor of state before payment is made by the clerk of the court. (Laws 1909, p. 660.)

**§ 967. Appraiser Taking More Than Legal Fees—Penalty.**

Sec. 16. It shall be a misdemeanor for any appraiser appointed by the clerk to make any appraisement in behalf of the state to take any fee or reward from any executor or administrator, legatee, next of kin or heir of any decedent, and for any such offense the clerk of the court shall dismiss him from such service, and upon conviction in the superior court he shall be fined not exceeding five hundred dollars and imprisoned not exceeding one year, or both, or either, at the discretion of the court. (Laws 1909, p. 661.)

**§ 968. Records to be Kept by Clerk of Court.**

Sec. 17. It shall be the duty of the clerk of the court to enter in a book to be provided at the expense of the state, to be kept for that purpose, and which shall be a public record, the returns made by all appraisers, under this act, opening an account in favor of the state against the decedent's estate; and the clerk may give certificates of payment of such tax from such record; and it shall be the duty of the clerk of the court to transmit to the auditor of the state on the first Monday of each month a statement of all returns made by appraisers during the preceding month, giving the name of the estate and the clear valuation thereof, subject to the foregoing tax, and the amount of the tax, which statement shall be entered by the auditor in a book to be kept by him for that purpose; and whenever any such tax shall have remained due and unpaid for one year it shall be lawful for the clerk of the court to apply to the court by bill or petition to enforce the payment of the same; whereupon said court, having caused due notice to be given to the owner or owners of the estate charged with the tax and to such other person or persons as may be interested, shall proceed according to equity to make such decrees or orders for the payment of the said tax out of such estates as shall be just and proper. (Laws 1909, p. 661.)

**§ 969. Proceedings in Case of Delinquencies.**

Sec. 18. If the clerk of the court shall discover that said tax has not been paid according to law, the court shall be authorized to cite the executors or administrators of the decedent whose estate is subject to the tax to file an account or to issue a citation to the executors, administrators, legatees or heirs citing them to appear on a day certain and show cause why the said tax should not be paid, and when personal service cannot be had, notice shall be given for four weeks, once a week, in at least one newspaper published in said county; and if the said tax shall be found to be due and unpaid the said delinquent shall pay said tax, interest and costs; and it shall be the duty of the solicitor of the district in which the said delinquent resides to sue for the recovery and amount of such tax, and for such services he shall be allowed a fee, to be fixed by the judge, not to

exceed five per cent of the amount recovered. The auditor of the state is authorized and empowered, in settlement of accounts of any clerk, to allow him costs of advertising and other reasonable fees and expenses incurred in the collection of said tax. (Laws 1909, p. 661.)

**§ 970. Compensation of Clerk of Court.**

Sec. 19. The clerks of the courts of the several counties of this state shall be the agents of the state for the collection of the said tax, and for services rendered in collecting and paying over the same the said agents shall be allowed to retain for their own use such percentage as may be allowed by the auditor, not exceeding three per centum on all taxes paid and accounted for. (Laws 1909, p. 662.)

**§ 971. Liability of Clerk of Court.**

Sec. 20. The said clerks of the courts shall be liable on their official bonds to the state for the faithful performance of the duties hereby imposed and for the regular accounting and paying over of the amounts to be collected and received. (Laws 1909, p. 662.)

**§ 972. Returns to be Made by Clerk of Court.**

Sec. 21. It shall be the duty of the clerk of the court of each county to make returns and payments to the state treasurer of the taxes under this act which he shall have received, stating for what estate paid, on the first Monday of each month; and for all taxes collected by him and not paid over to the state treasurer within ten days after said monthly return of the same he shall pay interest at the rate of twelve per centum per annum until paid. (Laws 1909, p. 662.)

## CHAPTER XLVI.

### NORTH DAKOTA STATUTE.

*(Laws of 1903, c. 171; Revised Code of 1905, pp. 1373-1376.)*

- § 973. Transfers Subject to Tax—Rates—Lien.
- § 974. Deduction of Debts and Costs.
- § 975. Property Subject to Tax.
- § 976. Meaning of Collateral Heirs—Pending Estates.
- § 977. Property Belonging to Foreign Estates Liable to Tax in This State.
- § 978. Property of Foreign Estate in Part Exempt in This State.
- § 979. Inventory to be Filed by Executor—Lien of Tax.
- § 980. Appraisement of Property.
- § 981. Estate for Life or for Years and Remainders.
- § 982. Estate for Life or for Years and Remainders.
- § 983. Bequest to Executor in Lieu of Compensation.
- § 984. Legacies Charged upon Real Estate.
- § 985. Collection of Tax by Executor.
- § 986. Time for Payment of Tax—Interest.
- § 987. Appraisement of Real Estate.
- § 988. Payment by Executor to State Treasurer.
- § 989. Filing Description of Real Estate in Case of Remainder.
- § 990. Filing Appraisement With State Treasurer.
- § 991. Account of Executor not Allowed Until Taxes Paid.
- § 992. Jurisdiction of District Court.

#### § 973. Transfers Subject to Tax—Rates—Lien.

Sec. 8320. All property within the jurisdiction of this state, and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the statutes of succession or inheritance of this or any other state, or by deed, grant, sale or gift intended to take effect in possession or in enjoyment after the death of the grantor or donor, to any person in trust or otherwise, other than to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, the lineal descendant of an adopted child of a decedent or to or for charitable, educational or religious societies or institutions within this state, shall be subject to a tax of two per centum of its valuation, above the sum of twenty-five thousand dollars, after the payment of all debts, for the use of the state; and all administrators, executors and trustees, and any such grantees under a conveyance, and any such donees under a gift, made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them, respectively, except as herein otherwise provided, with lawful interest as hereinafter set forth, until the same shall have been paid. The tax aforesaid shall be and remain a lien on such estate from the death of the decedent until paid. (Laws 1903, c. 171; Rev. Code 1905, sec. 8320.)

**§ 974. Deduction of Debts and Costs.**

Sec. 8321. The term "debts" shall include, in addition to debts owing by decedent at the time of his death, the local or state taxes due from the estate prior to his death, and a reasonable sum for funeral expenses, court costs, including the costs of appraisement made for the purpose of assessing the collateral succession or inheritance tax, the statutory fees of executors, administrators or trustees, and no other sum; but said debts shall not be deducted unless the same are approved and allowed, within fifteen months from the death of decedent, as established claims against the estate, unless otherwise ordered by the judge or court of the proper county. (Laws 1903, c. 171; Rev. Code 1905, sec. 8321.)

**§ 975. Property Subject to Tax.**

Sec. 8322. Except as to property passing to persons, corporations or societies exempted by section 8320 from the collateral succession or inheritance tax, and real property located outside of the state passing in fee from the decedent owner, the tax imposed under the provisions of this chapter shall be assessed and be collected from, property of every kind, which, at the death of the decedent owner is subject to or thereafter, for the purpose of distribution, is brought into this state for distribution purposes, or which was owned by any decedent domiciled within the state at the time of the death of such decedent, even though the property of said decedent so domiciled was situated outside of the state. (Laws 1903, c. 171; Rev. Code 1905, sec. 8322.)

**§ 976. Meaning of Collateral Heirs—Pending Estates.**

Sec. 8323. In the construction of this chapter the words "collateral heirs" shall be held to mean all persons who are not excepted from the provisions of the collateral succession or inheritance tax under the provisions of this chapter, except section 8322, shall apply to all pending estates which are not closed, and the property subjected by this chapter to the said tax is liable to the provisions herein contained, as to the amount and lien hereof, and the manner of enforcement and collection thereof, except as herein specifically provided otherwise. (Laws 1903, c. 171; Rev. Code 1905, sec. 8323.)

**§ 977. Property Belonging to Foreign Estates Liable to Tax in This State.**

Sec. 8324. Whenever any property belonging to a foreign estate, which estate, in whole or in part, is liable to pay a collateral succession or inheritance tax in this state, and said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state; in the event that the executor, administrator or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction, and with the state treasurer, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statement shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said debt-



edness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate. (Laws 1903, c. 171; Rev. Code 1905, sec. 8324.)

**§ 978. Property of Foreign Estate in Part Exempt in This State.**

Sec. 8325. Whenever any property, real or personal, within this state belongs to a foreign estate, and said foreign estate is in part exempt from the collateral succession or inheritance tax, and in part subject to said collateral succession or inheritance tax, and it is within the authority or discretion of the foreign executor, administrator or trustee administering the estate to dispose of the property, not specifically devised to direct heirs or devisees in the payment of the debts owing by the decedent at the time of his death, or in the satisfaction of legacies, devises or trusts given to direct and collateral legatees or devisees, or in payment of the distributive shares of any direct and collateral heirs, then the property within the jurisdiction of this state belonging to such foreign estate, shall be subject to the collateral succession or inheritance tax imposed under the provisions hereof, and the tax due thereon shall be assessed as provided in section 8324, and with the same proviso respecting the deduction of the proportionate share of the indebtedness, as herein provided. (Laws 1903, c. 171; Rev. Code 1905, sec. 8325.)

**§ 979. Inventory to be Filed by Executor—Lien of Tax.**

Sec. 8326. It shall be the duty of the executor, administrator or trustee, immediately upon his appointment, to make and file a separate inventory, any will to the contrary notwithstanding, of all the real estate of the decedent liable to such tax, and to cause the lien of the same to be entered upon the lien book in the office of the clerk of the court in each county where each particular part of said real estate is situated, and no conveyance of said estate or interest therein, which is subject to such tax before or after the entering of said lien, shall discharge the estate so conveyed from the operation thereof. (Laws 1903, c. 171; Rev. Code 1905, sec. 8326.)

**§ 980. Appraisement of Property.**

Sec. 8327. All the real estate of the decedent subject to such tax shall, except as hereinafter provided, be appraised within thirty days next after the appointment of an executor, administrator or trustee, and the tax thereon, calculated upon the appraised value after deducting debts for which the estate is liable shall be paid by the person entitled to said estate within fifteen months from the approval by the court of such appraisement, unless a longer period is fixed by the court, and in default thereof, the court shall order the same, or so much thereof as may be necessary to pay such tax, to be sold. (Laws 1903, c. 171; Rev. Code 1905, sec. 8327.)

**§ 981. Estate for Life or for Years and Remainders.**

Sec. 8328. When any person whose estate, over and above the amount of his just debts, exceeds the sum of one thousand dollars shall bequeath or devise any real property to or for the use of the father, mother, husband,

wife, lineal descendant, adopted child, or lineal descendant of such child, during life or for a term of years, and the remainder to a collateral heir or to a stranger to the blood, the court, upon the determination of such estate for life or years, shall upon its own motion or upon the application of the state treasurer, cause such estate to be appraised at its then actual market value, from which shall be deducted the value of any improvements thereon, or betterments thereto, if any, made by the remainderman, during the time of the prior estate, to be ascertained and determined by the appraisers, and the tax on the remainder shall be paid by such remainderman within sixty days from the approval by the court of the report of the appraisers. If such tax is not paid within said time, the court shall then order said real estate, or so much thereof as shall be necessary to pay such tax, to be sold. (Laws 1903, c. 171; Rev. Code 1905, sec. 8328.)

**§ 982. Estate for Life or for Years and Remainders.**

Sec. 8329. Whenever any real estate of a decedent shall be subject to such tax, and there be a life estate or interest for a term of years given to a party other than named in the preceding section, and the remainder to a collateral heir or stranger to the blood, the court shall direct the interest of the life estate or term of years to be appraised at the actual market value thereof, and upon the approval of such appraisement by the court, the party entitled to such life estate, or term of years, shall within sixty days thereafter pay such tax, and in default thereof the court shall order such interest in said estate, or so much thereof as shall be necessary to pay such tax, to be sold. Upon the determination of such life estate or term of years, the same provision shall apply as to the ascertainment of the amount of the tax and the collection of the same on the real estate in remainder as in like cases is provided in the preceding section. Whenever any personal estate of a decedent shall be subject to such tax, and there be a life estate or interest for a term of years given to a party other than named in the preceding section, and the remainder to a collateral heir or stranger to the blood, the court shall inquire into and determine the value of the life estate or interest for a term of years, and order and direct the amount of the tax thereon to be paid by the prior estate and that to be paid by the remainderman, each of whom shall pay their proportion of such tax within sixty days from such determination, unless a longer period is fixed by the court, and in default thereof the executor, administrator or trustee shall pay the same out of said property, and hold the same from distribution, and invest it at interest under the order of the court until said tax is paid, or until the interest on the same equals the amount of such tax, which shall thereupon be paid. (Laws 1903, c. 171; Rev. Code 1905, sec. 8329.)

**§ 983. Bequest to Executor in Lieu of Compensation.**

Sec. 8330. Whenever a decedent appoints one or more executors or trustees, and in lieu of their allowance or commission, makes a bequest or devise of property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises or residuary legacies, exceed what would be a reasonable compensation for their services, such

excess shall be liable to such tax, and the court having jurisdiction of their accounts, upon its own motion or on the application of the state treasurer, shall fix such compensation. (Laws 1903, c. 171; Rev. Code 1905, sec. 8330.)

**§ 984. Legacies Charged upon Real Estate.**

Sec. 8331. Whenever any legacies subject to said tax are charged upon or payable out of any real estate, the heir or devisee, before paying the same, shall deduct said tax therefrom and pay it to the executor, administrator, trustee or state treasurer, and the same shall remain a charge and be a lien upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator, trustee or state treasurer in his name of office, in the same manner as the payment of the legacy itself could be enforced. (Laws 1903, c. 171; Rev. Code 1905, sec. 8331.)

**§ 985. Collection of Tax by Executor.**

Sec. 8332. Every executor, administrator or trustee having in charge or trust any property subject to said tax, and which is made payable to him, shall deduct the tax therefrom, or shall collect the tax thereon from the legatee, or person entitled to said property, and he shall not deliver a specific legacy or property subject to said tax to any person until he has collected the tax thereon. (Laws 1903, c. 171; Rev. Code 1905, sec. 8332.)

**§ 986. Time for Payment of Tax—Interest.**

Sec. 8333. All taxes imposed by the provisions of this chapter shall be payable to the state treasurer, and those which are made payable by executors, administrators or trustees shall be paid within fifteen months from the death of the testator or intestate, or within fifteen months from assuming of the trust by such trustee, unless a longer period is fixed by the court. All taxes not paid within the time prescribed in this chapter shall draw interest at the rate of eight per centum per annum until paid. (Laws 1903, c. 171; Rev. Code 1905, sec. 8333.)

**§ 987. Appraisement of Real Estate.**

Sec. 8334. All appraisements of real estate subject to such tax shall be made and filed in the manner provided for appraisement of personal property. When such real estate is situated in another county the same appraisers may serve, or others may be appointed. (Laws 1903, c. 171; Rev. Code 1905, sec. 8334.)

**§ 988. Payment by Executor to State Treasurer.**

Sec. 8335. It is hereby made the duty of all executors, administrators or trustees charged with the management or settlement of any estate subject to the tax provided for in this chapter, to collect and pay to the state treasurer the amount of the tax due from any devisee, grantee or donee of the decedent, except in cases falling under the provisions of sections 8329 and 8330 hereof, in which cases the state treasurer shall collect the same. Applications may be made to the district court by such executor, administrator, trustee or state treasurer to sell the real estate subject to said tax

in an equitable action, or, if made to the court having charge of the settlement of said estate, the proceedings shall conform as nearly as may be to those for the sale of real estate of a decedent for the settlement of his debts. (Laws 1903, c. 171; Rev. Code 1905, sec. 8335.)

**§ 989. Filing Description of Real Estate in Case of Remainder.**

Sec. 8336. Whenever any real estate of a decedent shall so pass, either in possession and enjoyment or in remainder as to the subject of such tax, the executor, administrator or trustee, within six months after he has assumed the duties of his trust, shall file with the state treasurer a description of such real estate, giving the name of the county where the same is situated, the name of the decedent, the name of the person or persons to whom it so passes, whether the same passes in possession and enjoyment in fee, for life or for a term of years, naming the term of years, and if a prior estate is created, he shall give the name of the remainderman. (Laws 1903, c. 171; Rev. Code 1905, sec. 8336.)

**§ 990. Filing Appraisement With State Treasurer.**

Sec. 8337. As soon as any such real estate is appraised, it shall be the duty of the executor, administrator or trustee if he has not been discharged, and if he has finally been discharged, then it shall be the duty of the clerk, to file with the state treasurer a copy of such appraisement, stating also the amount of tax to be paid and within what time ordered to be paid. (Laws 1903, c. 171; Rev. Code 1905, sec. 8337.)

**§ 991. Account of Executor not Allowed Until Taxes Paid.**

Sec. 8338. No final settlement of the account of any executor, administrator or trustee shall be accepted or allowed unless it shall show, and the court shall find, that taxes imposed by the provisions of this chapter upon any property or interest therein belonging to the estate to be paid by such executors, administrators or trustees, and to be settled by said account, shall have been paid, and the receipt of the state treasurer for such tax shall be the proper voucher for such payment. (Laws 1903, c. 171; Rev. Code 1905, sec. 8338.)

**§ 992. Jurisdiction of District Court.**

Sec. 8339. The district court having either principal or ancillary jurisdiction of the settlement of the estate of the decedent shall have jurisdiction to hear and determine all questions in relation to said tax that may arise affecting any devise, legacy or inheritance, or any grant or gift, under this chapter, subject to appeal as in other cases, and the state treasurer shall in his name of office represent the interests of the state in any such proceeding. (Laws 1903, c. 171; Rev. Code 1905, sec. 8339.)

## CHAPTER XLVII.

## OHIO STATUTE.

*(General Code of 1910, pp. 1148-1151.)*

- § 993. Transfers Subject to Tax—Rates—Persons Liable—Interest—Lien.
- § 994. Exemptions from Tax.
- § 995. Estates for Life or for Years and Remainder.
- § 996. Bequests in Lieu of Compensation.
- § 997. Payment of Tax—Interest and Discount.
- § 998. Collection of Tax by Executor.
- § 999. Legacy Charged upon Real Estate.
- § 1000. Gift for Limited Period.
- § 1001. Sale of Property to Pay Tax.
- § 1002. Inventory and Assessment—Duty of Auditor and Treasurer.
- § 1003. Notice to Probate Judge of Taxable Transfers.
- § 1004. Refund of Tax in Certain Cases.
- § 1005. Valuation and Appraisement of Property.
- § 1006. Jurisdiction of Probate Court.
- § 1007. Statement to County Auditor of Transfers—Record by Probate Judge.
- § 1008. Fees of Officers in Collecting Tax.
- § 1009. Account of Executor not Allowed Until Taxes Paid.
- § 1010. Meaning of the Word "Property."

## § 993. Transfers Subject to Tax—Rates—Persons Liable—Interest—Lien.

Sec. 5331. All property within the jurisdiction of this state, and any interests therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which pass by will or by the intestate laws of this state, or by deed, grant, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor, to a person in trust or otherwise, other than to or for the use of the father, mother, husband, wife, brother, sister, niece, nephew, lineal descendant, adopted child, or person recognized as an adopted child and made a legal heir under the provisions of a statute of this state, or the lineal descendants thereof, or the lineal descendants of an adopted child, the wife or widow of a son, the husband of the daughter of a decedent, shall be liable to a tax of five per cent of its value, above the sum of two hundred dollars. Seventy-five per cent of such tax shall be for the use of the state, and twenty-five per cent for the use of the county wherein it is collected. All administrators, executors and trustees, and any such grantee under a conveyance made during the grantor's life, shall be liable for all such taxes, with lawful interest as hereinafter provided, until they have been paid, as hereinafter directed. Such taxes shall become due and payable immediately upon the death of the decedent and shall at once become a lien upon the property, and be and remain a lien until paid. (Gen. Code 1910, p. 1148.)

**§ 994. Exemptions from Tax.**

Sec. 5332. The provisions of the next preceding section shall not apply to property, or interests in property, transmitted to the state of Ohio under the intestate laws of the state, or embraced in a bequest, devise, transfer or conveyance to, or for the use of the state of Ohio, or to or for the use of a municipal corporation or other political subdivision thereof for exclusively public purposes, or public institutions of learning, or to or for the use of an institution in this state for purpose only of public charity or other exclusively public purposes. The property, or interests in property so transmitted or embraced in such devise, bequest, transfer or conveyance shall be exempt from all inheritance and other taxes while used exclusively for any of such purposes. (Gen. Code 1910, p. 1148.)

**§ 995. Estates for Life or for Years and Remainder.**

Sec. 5333. When a person bequeaths or devises property to or for the use of father, mother, husband, wife, brother, sister, niece, nephew, lineal descendant, adopted child, the lineal descendant of an adopted child, the wife or widow of a son, or the husband of a daughter, during life or for a term of years, and the remainder to a collateral heir, or to a stranger to the blood, the value of the prior estate shall be appraised, within sixty days after the death of the testator, in the manner hereinafter provided, and deducted, together with the sum of two hundred dollars, from the appraised value of such property. (Gen. Code 1910, p. 1148.)

**§ 996. Bequests in Lieu of Compensation.**

Sec. 5334. When a decedent appoints one or more executors or trustees, and instead of their lawful allowance makes a bequest or devise of property to them which would otherwise be liable to such tax, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to such tax, and the probate court having jurisdiction of their accounts shall fix such compensation. (Gen. Code 1910, p. 1149.)

**§ 997. Payment of Tax—Interest and Discount.**

Sec. 5335. Taxes imposed by this subdivision of this chapter shall be paid into the treasury of the county in which the court having jurisdiction of the estate or accounts is situated, by the executors, administrators, trustees, or other persons charged with the payment thereof. If such taxes are not paid within one year after the death of the decedent, interest at the rate of eight per cent shall be thereafter charged and collected thereon, and if not paid at the expiration of eighteen months after such death, the prosecuting attorney of the county wherein said taxes remain unpaid, shall institute the necessary proceedings to collect the taxes in the court of common pleas of the county, after first being notified in writing by the probate judge of the county of the nonpayment thereof. The probate judge shall give such notice in writing. If the taxes are paid before the expiration of one year after the death of the decedent, a discount of one per cent per month for each full month that payment has been made prior

to the expiration of the year, shall be allowed on the amount of such taxes. (Gen. Code 1910, p. 1149.)

**§ 998. Collection of Tax by Executor.**

Sec. 5336. An administrator, executor, or trustee, having in charge, or trust, property subject to such law, shall deduct the tax therefrom, or collect the tax thereon from the legatee or person entitled to the property. He shall not deliver any specific legacy or property subject to such tax to any person until he has collected the tax thereon. (Gen. Code 1910, p. 1149.)

**§ 999. Legacy Charged upon Real Estate.**

Sec. 5337. When a legacy subject to such tax is charged upon or payable out of real estate, the heir or devisee, before paying it, shall deduct the tax therefrom and pay it to the executor, administrator, or trustee, and the tax shall remain a charge upon the real estate until it is paid. Payment thereof shall be enforced by the executor, administrator, or trustee, in like manner as the payment of the legacy itself could be enforced. (Gen. Code 1910, p. 1149.)

**§ 1000. Gift for Limited Period.**

Sec. 5338. If such legacy is given in money to a person for a limited period, such administrator, executor or trustee shall retain the tax on the whole amount. If it is not in money, he shall make an application to the court having jurisdiction of his accounts to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatee on account of the tax and for such further order as the case may require. (Gen. Code 1910, p. 1149.)

**§ 1001. Sale of Property to Pay Tax.**

Sec. 5339. Administrators, executors and trustees may sell so much of the estate of the deceased as will enable them to pay said tax in like manner as they are empowered to do for the payment of his debts. (Gen. Code 1910, p. 1149.)

**§ 1002. Inventory and Assessment—Duty of Auditor and Treasurer.**

Sec. 5340. Within ten days after the filing of the inventory of every such estate, any part of which may be subject to a tax under the provisions of this subdivision of this chapter, the judge of the probate court, in which such inventory is filed, shall make and deliver to the county auditor of such county a copy of the inventory; or, if it can be conveniently separated, a copy of such part of the estate, with the appraisal thereof. The auditor shall certify the value of the estate, subject to taxation hereunder and the amount of taxes due therefrom, to the county treasurer, who shall collect such taxes, and thereupon place twenty-five per cent thereof to the credit of the county expense fund, and pay seventy-five per cent thereof into the state treasury, to the credit of the general revenue fund, at the time of making his semi-annual settlement. (Gen. Code 1910, p. 1150.)

**§ 1003. Notice to Probate Judge of Taxable Transfers.**

Sec. 5341. When any of the real estate of a decedent passes to another person so as to become subject to such tax, the executor, administrator or trustee of the decedent shall inform the probate judge thereof within six months after he had assumed the duties of his trust, or if the fact is not known to him within that time, then within one month from the time that it does become so known to him. (Gen. Code 1910, p. 1150.)

**§ 1004. Refund of Tax in Certain Cases.**

Sec. 5342. When for any reason the devisee, legatee or heir who has paid such tax relinquishes or reconveys a portion of the property on which it was paid, or it is judicially determined that the whole or part of such tax ought not to have been paid, the tax, or the due proportional part thereof shall be repaid to him by the executor, administrator or trustee. (Gen. Code 1910, p. 1150.)

**§ 1005. Valuation and Appraisement of Property.**

Sec. 5343. The value of such property, subject to, said tax, shall be its actual market value as found by the probate court. If the state, through the prosecuting attorney of the proper county, or any person interested in the succession to the property, applies to the court, it shall appoint three disinterested persons, who, being first sworn, shall view and appraise such property at its actual market value for the purposes of this tax, and make return thereof to the court. The return may be accepted by the court in a like manner as the original inventory of the estate is accepted, and if so accepted, it shall be binding upon the person by whom this tax is to be paid, and upon the state. The fees of the appraisers shall be fixed by the probate judge and paid out of the county treasury upon the warrant of the county auditor. In case of an annuity or life estate, the value thereof shall be determined by the so-called actuaries' combined experience tables and five per cent compound interest. (Gen. Code 1910, p. 1150.)

**§ 1006. Jurisdiction of Probate Court.**

Sec. 5344. The probate court, having either principal or auxiliary jurisdiction of the settlement of the estate of the decedent, shall have jurisdiction to hear and determine all questions in relation to such tax that arise, affecting any devise, legacy or inheritance under this subdivision of this chapter, subject to appeal as in other cases, and the prosecuting attorney shall represent the interests of the state in such proceedings. (Gen. Code 1910, p. 1150.)

**§ 1007. Statement to County Auditor of Transfers—Record by Probate Judge.**

Sec. 5345. Each probate judge, at least once in six months, shall render to the county auditor a statement of the property within the jurisdiction of his court that has become subject to such tax during such period, the number and amount of such taxes as will accrue during the next six months,



so far as they can be determined from the probate records, and the number and amount thereof due and unpaid. Each probate judge shall keep a separate record, in a book to be provided for that purpose, of all cases arising under the provisions of this subdivision of this chapter. (Gen. Code 1910, p. 1151.)

**§ 1008. Fees of Officers in Collecting Tax.**

Sec. 5346. The fees of officers having duties to perform under the provisions of this subdivision of this chapter, shall be paid by the county from the county expense fund thereof, and shall be the same as allowed by law for similar services. In ascertaining the amounts due the state, seventy-five per cent of the cost of collection and other necessary and legitimate expenses incurred by the county in the collection of such taxes, shall be charged to the state and deducted from the amount of taxes to be paid into the state treasury. (Gen. Code 1910, p. 1151.)

**§ 1009. Account of Executor not Allowed Until Taxes Paid.**

Sec. 5347. A final settlement of the account of an executor, administrator or trustee shall not be accepted or allowed by the probate court unless it shows, and the judge of that court finds, that all taxes imposed by the provisions of this subdivision of this chapter, upon any property or interest therein, belonging to the estate to be settled by such account, have been paid. The receipt of the county treasurer shall be the proper voucher for such payment. (Gen. Code 1910, p. 115.)

**§ 1010. Meaning of the Word "Property."**

Sec. 5348. The word "property" as used in this subdivision of this chapter includes real and personal estate, any form of interest therein, and annuities. (Gen. Code 1910, p. 1151.)

## CHAPTER XLVIII.

## OKLAHOMA STATUTE.

*(Laws of 1907-08, pp. 733-748; Compiled Laws of 1909, pp. 1549-1558.)*

- § 1011. Transfers Subject to Tax—Market Value of Property.
- § 1012. Rate of Taxation in Certain Cases.
- § 1013. Rate of Taxation in Other Cases.
- § 1014. Exemptions from Tax.
- § 1015. Lien of Tax—Payment—Receipts.
- § 1016. Interest and Discount.
- § 1017. Collection of Tax by Executor—Sale of Property.
- § 1018. Refunding Tax Paid.
- § 1019. Bond to Secure Deferred Payments.
- § 1020. Bequest to Executor in Lieu of Compensation.
- § 1021. Transfer of Stock or Obligations by Foreign Executor—Notice.
- § 1022. Jurisdiction of County Court.
- § 1023. Appointment of Appraisers and Valuation of Property.
- § 1024. Proceedings by Appraiser—Compensation.
- § 1025. Report of Appraiser.
- § 1026. Duty of Insurance Commissioner.
- § 1027. Duty of State Auditor.
- § 1028. Guardian of Person Under Disability—Reappraisalment.
- § 1029. Procedure to Enforce Unpaid Tax.
- § 1030. Books to be Furnished by State Auditor.
- § 1031. Report of County Judge.
- § 1032. Report of County Treasurer.
- § 1033. Extensions and Compromise by County Treasurer.
- § 1034. Receipts and Their Registration.
- § 1035. Disposition of Revenue.
- § 1036. Interpretation of Words Used in Statute.

**§ 1011. Transfers Subject to Tax—Market Value of Property.**

Sec. 7712. A tax shall be and is hereby imposed upon any transfer of any property, real, personal, or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association, or corporation, except corporations of this state organized under its laws solely for religious, charitable, or educational purposes, which shall use the property so transferred exclusively for the purposes of their organization within this state in the following cases: When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state. When a transfer is by will or intestate law, of property within the state or within its jurisdiction and the decedent was a nonresident of the state at the time of his death. When the transfer is of property made by a resident or by a non-resident, when such nonresident's property is within this state or within its jurisdiction, by deed, grant, bargain, sale, or gift, made in contemplation of

the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death. Such tax shall be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy to any property or the income thereof, by any such transfer whether made before or after the passage of this act; provided, that property or estates which have vested in such persons or corporations before this act takes effect shall not be subject to the tax. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment, when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure. The tax so imposed shall be upon the clear market value of such property at the rates hereinafter prescribed, and only upon the excess of the exemptions hereinafter granted. (Laws 1907-08, p. 733; Comp. Laws 1909, p. 1549.)

#### § 1012. Rate of Taxation in Certain Cases.

Sec. 7713. When the property or any beneficial interest therein passes by any such transfer, where the amount of the property shall exceed in value the exemptions hereinafter specified, the primary rates of taxation hereinafter imposed shall apply as follows:

On the first five thousand dollars of such excess in class one; on first two thousand dollars of such excess in classes two and three; on the first five hundred dollars of such excess in classes four and five and shall be:

Class 1. Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal issue, lineal ancestors of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent; provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per centum of the clear value of such interest in such property.

Class 2. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of a descendant of a brother or sister of the decedent, a wife or widow of a son or the husband of a daughter of the decedent, at the rate of one and one-half per centum of the clear value of such interest in such property.

**Class 3.** Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the decedent, at the rate of three per centum of the clear value of such interest in such property.

**Class 4.** Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother or a descendant of the brother or sister of the grandfather or grandmother of the decedent, at the rate of four per centum of the clear value of such interest in such property.

**Class 5.** Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic, or corporate, at the rate of five per centum of the clear value of such interest in such property. (Laws 1907-08, p. 734; Comp. Laws 1909, p. 1550.)

#### § 1013. Rate of Taxation in Other Cases.

**Sec. 7714.** The foregoing rates in section 7713 are for convenience termed the primary rates. Upon all in excess of five thousand dollars in class one, the primary rate provided for herein shall be increased one one hundred twenty-fifth ( $1/125$ ) of one per centum for every one hundred dollars increase in valuation of such excess. Upon all in excess of two thousand dollars in classes two and three the primary rate provided for herein shall be increased one-fiftieth of one per centum for every one hundred dollars increase in valuation of such excess. Upon all in excess of five hundred dollars in classes four and five, the primary rate provided for herein shall be increased one-tenth of one per centum for every one hundred dollars increase in valuation for such excess. (Laws 1907-08, p. 735; Comp. Laws 1909, p. 1550.)

#### § 1014. Exemptions from Tax.

**Sec. 7715.** The following exemptions from the tax are hereby allowed:

All property transferred to corporations of this state organized under its laws solely for religious, charitable, or educational purposes which shall use the property so transferred exclusively for the purposes of their organization within the state shall be exempt.

Property of the clear value of ten thousand dollars transferred to the widow of the decedent, and five thousand dollars transferred to each of the other persons described in the first division of section 7713, shall be exempt.

Property of the clear value of five hundred dollars, transferred to each of the persons described in the second subdivision of section 7713, shall be exempt.

Property of the clear value of two hundred and fifty dollars, transferred to each of the persons described in the third subdivision of section 7713, shall be exempt.

Property of the clear value of one hundred and fifty dollars, transferred to each of the persons described in the fourth subdivision of section 7713, shall be exempt.

Property of the clear value of one hundred dollars, transferred to each of the persons and corporations as described in the fifth subdivision of section 7718, shall be exempt. (Laws 1907-08, p. 736; Comp. Laws 1909, p. 1551.)

**§ 1015. Lien of Tax—Payment—Receipts.**

Sec. 7716. Every such tax shall be and remain a lien upon the property transferred until paid and the person to whom the property is so transferred and the administrators, executors, and trustees of every estate so transferred, shall be personally liable for such tax until its payment. The tax shall be paid to the treasurer of the county in which the county court is situated having jurisdiction as herein provided; and said treasurer shall give, and every executor, administrator, or trustee shall take duplicate receipts from him of such payments, one of which he shall immediately send to the state auditor, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and to seal said receipt with the seal of his office, and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; but no executor, administrator, or trustee shall be entitled to a final accounting of an estate, in settlement of which a tax is due under the provisions of this act, unless he shall produce a receipt so sealed and countersigned by the state auditor or a copy thereof certified by him, or unless a bond shall have been filed, as prescribed by section 7720. All taxes imposed by this act shall be due and payable at the time of the transfer except as hereinafter provided. Taxes upon the transfer of any estate, property, or interest therein, limited, conditioned, dependent, or determinable upon the happening of any contingency or future event, by reason of which the fair market value thereof cannot be ascertained at the time of the transfer, as herein provided, shall accrue and become due and payable when the beneficiaries shall come into actual possession or enjoyment thereof. (Laws 1907-08, p. 736; Comp. Laws 1909, p. 1551.)

**§ 1016. Interest and Discount.**

Sec. 7717. If such tax is paid within one year from the accruing thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accruing thereof, interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued; unless by reason of claims made upon the estate, necessary litigation, or other unavoidable cause of delay, such tax shall not be determined and paid as herein provided, until the cause of such delay is removed, after which ten per centum shall be charged. In all cases where a bond shall be given under the provisions of section 7720, interest shall be charged at the rate of six per centum from the accrual of the tax, until the date of payment thereof. (Laws 1907-08, p. 737; Comp. Laws 1909, p. 1551.)

**§ 1017. Collection of Tax by Executor—Sale of Property.**

Sec. 7718. Every executor, administrator, or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such

tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator, or intestate. Any such administrator, executor, or trustee having in charge or in trust, any legacy or property for distribution, subject to such tax, shall deduct the tax therefrom; and within thirty days therefrom shall pay over the same to the county treasurer, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof, from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this act, to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir, or devisee, shall deduct such tax therefrom and pay it to the administrator, executor, or trustee, and the tax shall remain a lien or charge on such real property until paid, and the payment thereof shall be enforced by the executor, administrator, or trustee, in the same manner that payment of the legacy might be enforced, or by the county attorney under section 7730. If any such legacy shall be given in money to any such person for a limited period, the administrator, executor, or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him to make an apportionment if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require. (Laws 1907-08, p. 737; Comp. Laws 1909, p. 1552.)

#### § 1018. Refunding Tax Paid.

Sec. 7719. If any debt shall be proved against the estate of the decedent after the payment of any legacy, or distributive share thereof, from which any such tax has been deducted, or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by the order of the county court having jurisdiction thereof on notice to the state auditor to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee, if the tax has not been paid to the county treasurer, or repaid by such treasurer, or state treasurer, if such tax has been paid to him. When any amount of said tax shall have been paid erroneously into the state treasury, it shall be lawful for the state auditor, upon satisfactory proofs presented to him of the facts, to require the amount of such erroneous or illegal payment to be refunded to the executor, administrator, trustee, person or persons who have paid any such tax in error, from the treasury; or the said state auditor may order, direct and allow the treasurer of any county to refund the amount of any illegal or erroneous payment of such tax out of the funds in his hands or custody to the credit of such taxes, and credit him with the same in his quarterly account rendered to the state auditor under this act. Provided, however, that all applications for such refunding of erroneous taxes shall be made within one year from the payment thereof, or within one year after the reversal or modification of the order fixing such tax. (Laws 1907-08, p. 738; Comp. Laws 1909, p. 1552.)

**§ 1019. Bond to Secure Deferred Payments.**

Sec. 7720. Any beneficiary of any property chargeable with a tax under this act, and any executors, administrators and trustees thereof, may elect, within eighteen months from the date of the transfer thereof as herein provided, not to pay such tax until the person or persons beneficially interested therein shall come into the actual possession or enjoyment thereof. The person or persons so electing shall give a bond to the state in a penalty of three times the amount of any such tax, with such securities as the county court of the proper county may approve, conditioned for the payment of such tax and interest thereon at such time or period as the person or persons beneficially interested therein may come into the actual possession or enjoyment of such property, which bond shall be filed in the county court. Such bond must be executed and filed and a full return of such property upon oath made to the county court within one year from the date of such transfer thereof as herein provided, and such bond must be renewed when ordered by the court. (Laws 1907-08, p. 739; Comp. Laws 1909, p. 1552.)

**§ 1020. Request to Executor in Lieu of Compensation.**

Sec. 7721. If a testator bequeaths property to one or more executors or trustees in lieu of their commissions or allowances, or makes them his legatees to any amount exceeding the commission or allowance prescribed by law for an executor or trustee, the excess in value of the property so bequeathed, above the amount of commissions or allowances prescribed by law in similar cases, shall be taxable by this act. (Laws 1907-08, p. 739; Comp. Laws 1909, p. 1553.)

**§ 1021. Transfer of Stock or Obligations by Foreign Executor—Notice.**

Sec. 7722. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county or the state auditor on the transfer thereof. No safe deposit company, bank or other institution, person or persons holding securities or assets of a decedent, shall deliver or transfer the same to the executors, administrators, or legal representatives of said decedent, or upon their order or request unless notice of the time and place of such intended transfer be served upon the state auditor at least ten days prior to the said transfer; nor shall any such safe deposit company, bank or other institution, person or persons deliver or transfer any securities or assets of the estate of a nonresident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of this act, unless the state auditor consents thereto in writing; and it shall be lawful for the said county treasurer or state auditor personally or by representative to examine said securities or assets at the time of such delivery or transfer. Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax as herein provided, shall render said safe deposit company, trust company, bank or other institution, person or persons, liable to the payment of the tax due upon said securities or assets in pursu-

ance of the provisions of this act. (Laws 1907-08, p. 739; Comp. Laws 1909, p. 1553.)

#### **§ 1022. Jurisdiction of County Court.**

Sec. 7723. The county court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under this act, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this act, and to do any act in relation thereto authorized by law to be done by a county court in other matters or proceedings coming within its probate jurisdiction. Every petition for ancillary letters testamentary or ancillary letters of administration, made in pursuance of the laws governing probate practice of a person to be cited as therein prescribed, and a true and correct statement of all the decedent's property in this state, and the value thereof; and upon presentation thereof the county court shall issue a citation directed to such county treasurer, and upon the return of the citation, the county court shall determine the amount of the tax which may be or become due under the provision of this act, and his decree awarding the letters may contain any provisions for the payment of such tax or the giving of security therefor, which might be made by such county court if the county treasurer were a creditor of deceased. (Laws 1907-08, p. 740; Comp. Laws 1909, p. 1553.)

#### **§ 1023. Appointment of Appraisers and Valuation of Property.**

Sec. 7724. The county court upon the application of any interested party, including the state auditor, county treasurer, or upon his own motion, shall as often as, and whenever occasion may require, appoint a competent person as appraiser to fix the fair market value at the time of transfer thereof of the property of persons whose estates shall be subject to the payment of any tax imposed by this act.

Whenever a transfer of property is made upon which there is, or in any contingency there may be, a tax imposed, such property shall be appraised at its clear market value immediately upon the transfer or as soon thereafter as practicable. The value of every future or limited estate, income, interest or annuity dependent upon life or lives in being, shall be determined by the rule, method and standard of mortality and value employed by the commissioner of insurance in ascertaining the value of policies of life insurance, and annuities for the determination of liabilities of life insurance companies, except that the rate of interest for making such computation shall be five per centum per annum.

In estimating the value of any estate, or interest in property to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made in respect of any contingent encumbrance thereon, nor in respect of any contingency upon the happening of which the estate or property or some part thereof, or interest therein, might be abridged, defeated or diminished; provided, however, that in the event of such encumbrance taking effect as an actual burden upon the



interest of the beneficiary, or in the event of the abridgment, defeat or diminution of such estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax in respect to the amount or value of the encumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed in respect of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided in section 7719.

Where any property shall after the passage of this act be transferred subject to any charge, estate, or interest determinable by the death of any person, or at any period ascertainable only by reference to death, the increase of benefit accruing to any person or corporation upon extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase of benefit from the person from whom the title to their respective estates or interests is derived.

When property is transferred in trust or otherwise, and the rights, interests or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon such transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith out of the property transferred, provided, however, that on the happening of any contingency whereby the said property or any part thereof is transferred to a person or corporation exempt from taxation under the provisions of this act or to a person taxable at a less rate than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this act with legal interest from the time of payment. Such return of overpayment shall be made in the manner provided by section 7719.

Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished, clear value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation upon which said estates in expectancy may have been limited.

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting. (Laws 1907-08, p. 741; Comp. Laws 1909, p. 1553.)

#### § 1024. Proceedings by Appraiser--Compensation.

Sec. 7725. Every such appraiser shall forthwith give notice by mail to all persons known to have claim or interest in the property to be appraised, including the county treasurer, and to such persons as the county court may by order direct, of the time and place when he will appraise such property.

He shall, at such time and place, appraise the same at its fair market value, as herein prescribed, and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing, to the said county court, together with the depositions of the witnesses examined, and such other facts in relation thereto and to the said matters as the said county court may order or require. Every appraiser shall be paid on the certificate of the county court at the rate of two dollars per day for every day actually and necessarily employed in such appraisal, and his actual and necessary traveling expenses and the fees paid such witnesses, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record, by the county treasurer out of any funds he may have on his hands on account of any tax imposed under the provisions of this act. (Laws 1907-08, p. 743; Comp. Laws 1909, p. 1555.)

**§ 1025. Report of Appraiser.**

Sec. 7726. The report of the appraiser shall be made in duplicate, one of which duplicates shall be filed in the office of the county court and the other in the office of the state auditor. Upon filing such report in the county court, the county court shall forthwith give twenty days' notice by mail to all persons known to be interested in the estate, including the county treasurer, of the time and place of the hearing in the matter of such report and the county court from such report and other proofs relating to any such estate shall forthwith at the time so fixed, determine the cash value of such estate and the amount of tax to which the same is liable, or the county court without appointing an appraiser upon giving twenty days' notice by mail to all persons known to be interested in the estate including the county treasurer, of the time and place of hearing, may at the time so fixed hear evidence and determine the cash value of such estate and the amount of tax to which the same is liable. If the residence or postoffice address of any person interested in any estate is unknown to the executor, administrator, or trustee, notice of the hearing in the matters of the report of the appraisers or notice that the county court without appointing an appraiser will determine the cash value of an estate, shall be given to all such persons by publication of such notice not less than three successive weeks prior to the time fixed for such hearing or determination in such newspaper published within the county as the court shall direct. (Laws 1907-08, p. 743; Comp. Laws 1909, p. 1555.)

**§ 1026. Duty of Insurance Commissioner.**

Sec. 7727. The commissioner of insurance shall on application of any county court determine the value of any such future or contingent estates, income, or interests therein, limited, contingent, dependent or determinable upon the life or lives of the person or persons in being upon the facts contained in such appraiser's report or upon the facts contained in the county court's finding and determination and certify the same to the county court and his certificate shall be presumptive evidence that the method of compu-

tation adopted therein is correct. (Laws 1907-08, p. 744; Comp. Laws 1909, p. 1555.)

**§ 1027. Duty of State Auditor.**

Sec. 7728. The state auditor or any person dissatisfied with the appraisal or assessment and determination of such tax, may apply for a rehearing thereof, before the county court, within sixty days from the fixing, assessing and determination of the tax by the county court as herein provided, on filing a written notice which shall state the grounds of the application for a rehearing. The rehearing shall be upon the records, proceedings, and proofs had and taken on the hearings as herein provided and a new trial shall not be had or granted unless specially ordered by the county court. (Laws 1907-08, p. 744; Comp. Laws 1909, p. 1555.)

**§ 1028. Guardian of Person Under Disability—Reappraisal.**

Sec. 7729. The county court shall immediately give notice by mail upon the determination by him as to the value of any estate which is taxable under this act and of the tax to which it is liable to all parties known to be interested therein including the state auditor. If however it appears at this or any stage of the proceedings that any of such parties known to be interested in the estate is an infant or an incompetent, the county court shall if the interest of such infant or incompetent is presently involved, and is adverse to that of the other persons interested therein appoint a special guardian of such infant, but nothing in this provision shall affect the right of an infant over fourteen years of age or of anyone on behalf of an infant under fourteen years of age, to nominate and apply for the appointment of a special guardian of such infant at any stage of the proceedings.

Within one year after the entry of an order or decree of the county court determining the value of an estate and assessing the tax thereon, the state auditor may if he believes that such appraisal, assessment, or determination has been fraudulently, collusively or erroneously made, make application to the judge of the district court in which the said estate is administered on for a reappraisal thereof. The district judge to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers, be subject to the duties, shall give the notice, and receive the compensation provided by sections 7724 and 7725. Such compensation shall be payable by the county treasurer out of any funds he may have on account of any tax imposed under the provisions of this act upon the certificate of the district judge appointing. The report of such appraiser shall be filed in the district court for which he was appointed and thereafter the same proceedings shall be taken and had by and before such district court as herein provided to be taken and had by and before the county court.

The determination and assessment of such district court shall supersede the determination and assessment of the county court and shall be filed by such district court in the office of the state auditor and a certified copy thereof transmitted to the county court of the proper county. (Laws 1907-08, p. 744; Comp. Laws 1909, p. 1556.)

**§ 1029. Procedure to Enforce Unpaid Tax.**

Sec. 7730. If the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act after the refusal or neglect of any person liable therefor to pay the same, he shall notify the county attorney of the county in writing of such failure or neglect; and such county attorney, if he have probable cause to believe that such tax is due and unpaid, shall apply to the county court for a citation citing the person liable to pay such tax to appear before the court on the day specified not more than three months from the date of such citation and show cause why the tax should not be paid. The judge of the county court, upon such application and whenever it shall appear to him that any such tax, accruing under this act, has not been paid as required by law, shall issue such citation, and the service of such citation, and the time, manner, and proof thereof, and the hearing and determination thereof, shall conform as near as may be to the provisions of the laws governing probate practice of this state, and whenever it shall appear that any such tax is due and payable, and the payment thereof cannot be enforced under the provisions of this act in said county court, the person or corporation from whom the same is due is hereby made liable to the county of the county court having jurisdiction over such estate or property for the amount of such tax, and it shall be the duty of the county attorney of said county in the name of such county to sue for and enforce the collection of such tax, and it is made the duty of said county attorney to appear for and act on behalf of any county treasurer, who shall be cited to appear before any county court under the provisions of this act. (Laws 1907-08, p. 745; Comp. Laws 1909, p. 1556.)

**§ 1030. Books to be Furnished by State Auditor.**

Sec. 7731. The state auditor shall furnish to each county court a book which shall be a public record, and in which he shall enter the name of every decedent [decedent] whose estate is or may become liable for such tax, and upon whose estate an application to him has been made for the issue of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent [decedent] the estimated value of the property of such decedent [decedent], the names, places, residence and relationship to him of his heirs at law, the names and places of residence of the legatees and devisees in any will of any such decedent, the amount of each legacy and the estimated value of any property devised therein and to whom devised. These entries shall be made from the date [data] contained in the paper filed on any such application, or in any proceeding relating to the estate of the decedent [decedent]. The county court shall also enter in such book the amount of the personal property of any such decedent [decedent] as shown by the inventory thereof, when made and filed in his office, and the returns made by any appraiser appointed by him under this act, and the value of annuities, life estates, terms of years, and other property of any such decedent, or given by him in his will or otherwise, as fixed by the county court, and the tax assessed thereon, and the amounts of any receipts for payment of tax on the estate of such decedent, under this act filed with him. The state auditor shall also furnish to each county, forms for the reports to be

made by such county court, which shall correspond with the entries to be made in such books. (Laws 1907-08, p. 746; Comp. Laws 1909, p. 1557.)

**§ 1031. Report of County Judge.**

Sec. 7732. Each judge of county court shall on January, April, July, and October first, of each year, make a report in duplicate, upon the forms furnished by the state auditor containing all the data and matters required to be entered in such books, one of which shall be immediately delivered to the county treasurer and the other transmitted to the state auditor. (Laws 1907-08, p. 747; Comp. Laws 1909, p. 1557.)

**§ 1032. Report of County Treasurer.**

Sec. 7733. Each county treasurer shall make a report, under oath to the state auditor on January, April, July and October first, of each year, of all taxes received by him under this act, stating for what estate and by whom and when paid. The form of such report may be prescribed by the state auditor. He shall at the same time pay the state treasurer all the taxes received by him under this act and not previously paid into the state treasury, and for all such taxes collected by him and not paid the state treasurer within thirty days from the times herein required he shall pay interest at the rate of ten per centum per annum. (Laws 1907-08, p. 747; Comp. Laws 1909, p. 1557.)

**§ 1033. Extensions and Compromise by County Treasurer.**

Sec. 7734. The county treasurer, with the consent of the state auditor and the attorney general, expressed in writing, is authorized to enter into an agreement with the executor, administrator or trustee of any estate therein situate in which remainders or expectant estates have been of such a nature or so disposed and circumstanced that the taxes therein were held not presently payable or where the interests of the legatees or devisees are not ascertainable under the provisions of this act, and to compound such taxes upon such terms as may be deemed equitable and expedient and to grant discharges to said executors, administrators, or trustees upon the payment of the taxes provided for in such composition, provided, however, that no such composition shall be conclusive in favor of said executors, administrators or trustees as against the interests of such cestui que trust as may possess either present rights of enjoyment, or fixed, absolute or indefeasible rights of future enjoyment or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto either personally when competent or by guardian. Composition or settlement made or effected under the provisions of this section shall be executed in triplicate and one copy shall be filed in the office of the state auditor; one copy in the office of the judge of the county court in which the tax was paid; and one copy to be delivered to the executors, administrators or trustees, who shall be parties thereto. (Laws 1907-08, p. 747; Comp. Laws 1909, p. 1557.)

**§ 1034. Receipts and Their Registration.**

Sec. 7735. Any person shall upon the payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county, of the state

auditor, or at his option to a copy of a receipt that may have been given by such treasurer or state auditor for the payment of any tax under this act, under the official seal of such treasurer or state auditor, which receipt shall designate upon what real property, if any, of which any decedent may have died seised, such tax shall have been paid, by whom, and whether in full of such tax. Such receipt may be recorded in the office of the register of deeds of the county in which such property is situate in a book to be kept by him for that purpose, which shall be labeled "transfer tax." (Laws 1907-08, p. 748; Comp. Laws 1909, p. 1558.)

**§ 1035. Disposition of Revenues.**

Sec. 7736. All taxes levied and collected under this act, less any expenses of collection, shall be paid into the treasury of the state, and one-half of same shall be used for the public schools of this state as other available state common school funds, and one-half shall be applicable to the expenses of the state government, and to such other purposes as the legislature may by law direct. (Laws 1907-08, p. 748; Comp. Laws 1909, p. 1558.)

**§ 1036. Interpretation of Words Used in Statute.**

Sec. 7737. The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees or successors, and shall include all personal property within or without the state. The word "transfer" as used in this act shall be taken to include the passing of property by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment in the manner herein prescribed. The word "decedent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor or donor. The words "county treasurer" and "county attorney" as used in this act shall be taken to mean the treasurer and county attorney of the county of the county court having jurisdiction as provided in section 7723 of this act. (Laws 1907-08, p. 748; Comp. Laws 1909, p. 1558.)

## CHAPTER XLIX.

## OREGON STATUTE.

(*Laws of 1903, pp. 49-63; Laws of 1905, p. 309; Laws of 1909, p. 60; 1 Lord's Oregon Laws, pp. 675-689.*)

- § 1037. Transfers Subject to Tax—Exemptions.
- § 1038. Rates of Taxation.
- § 1039. Time for Payment.
- § 1040. Collection of Tax by Executor.
- § 1041. Payment to State Treasurer—Receipts.
- § 1042. Lien of Tax.
- § 1043. Interest and Discount.
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§ 1076. Compensation of Officers.

§ 1077. Payment of Expenses and Disbursement.

§ 1078. Appraiser Taking More Than Regular Fees—Penalty.

§ 1037. Transfers Subject to Tax—Exemptions.

Sec. 1191. All property within the jurisdiction of the state, and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by statutes of inheritance of this or any other state, or by deed, grant, bargain, sale, or gift, made in contemplation of the death of the grantor, or bargainor, or intended to take effect in possession or enjoyment after the death of the grantor, bargainor, or donor, to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, or by reason whereof any person, or body politic or corporate, shall become beneficially entitled, in possession or expectation, to any property or income thereof, shall be and is subject to a tax at the rate hereinafter specified in section 1192, to be paid to the treasurer of the state for the use of the state; and all heirs, legatees, and devisees, administrators, executors, and trustees, and any such grantee under a conveyance, and any such donee under a gift made during the grantor or donor's life, shall be respectively liable for any and all such taxes, with interest thereon, until the same shall have been paid, as hereinafter provided, provided, however, that devises, bequests, legacies, and gifts to benevolent, charitable, or educational institutions incorporated within this state and actually engaged in this state in carrying out the objects and purposes for which so incorporated, or to any person or persons to be held in trust for any such institution in lieu thereof, shall be exempt from any taxation under the provisions of this act. (Laws 1903, p. 49; Laws 1905, p. 309; 1 Lord's Laws, p. 675.)

§ 1038. Rates of Taxation.

Sec. 1192. When such inheritance, devise, bequest, legacy, gift, or beneficial interest to any property or income therefrom shall pass to or for the use or benefit of any grandfather, grandmother, father, mother, husband, wife, child, brother, sister, wife or widow of a son, or the husband of a daughter, or any child or children adopted as such in conformity with the laws of the state of Oregon, or to any person to whom the decedent for not less than ten years prior to death stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, in every such case the tax shall be at the rate of one per centum on the appraised value thereof received by each person; provided, that in the above cases any estate which may be valued at a less sum than \$10,000 shall not be subject to any such duty or tax, and the tax is to be levied in the above cases only on the excess of \$5,000 received by each person.

When such inheritance, devise, bequest, legacy, gift, or the beneficial interest to any property or income therefrom shall pass to or for the use or benefit of any uncle, aunt, niece, nephew, or any lineal descendant of the same, in every such case the tax shall be at the rate of two per centum on the appraised value thereof received by each person; provided, that in the above cases any estate which may be valued at a less sum than \$5,000 shall not be subject to any such duty or tax, and the tax is to be levied in the above cases only on the excess of \$2,000 received by each person.



In all other cases the tax shall be at the rate of three per centum on the appraised value thereof received by each person, body politic or corporate, on the whole of all amounts received not exceeding \$10,000; four per centum on the whole of all amounts received over \$10,000, and not exceeding \$20,000; five per centum on the whole of all amounts received over \$20,000, and not exceeding \$50,000; six per centum on the whole of all amounts received over \$50,000; provided, that in the above cases any estate which may be valued at a less sum than \$500 shall not be subject to any such duty or tax, and the tax is to be levied in the above cases only when the amount received by a person, body politic or corporate amounts to \$500 or more. (Laws 1903, p. 49; Laws 1909, p. 60; 1 Lord's Laws, p. 676.)

#### § 1039. Time for Payment.

Sec. 1193. All taxes imposed by this act shall take effect at and accrue upon the death of the decedent, or donor, and shall be due and payable at the expiration of eight months from such death, except as otherwise provided in this act; provided, however, that taxes upon any devise, bequest, legacy, or gift, limited, conditioned, dependent, or determinable upon the happening of any contingency or future event, by reason of which the full and true value thereof cannot be ascertained at or before the time when the taxes become due and payable as aforesaid, shall accrue and become due and payable when the person or corporation beneficially entitled thereto shall come into actual possession or enjoyment thereof. (Laws 1903, p. 49; 1 Lord's Laws, p. 677.)

#### § 1040. Collection of Tax by Executor.

Sec. 1194. Any administrator, executor, or trustee having in charge, or in trust, any property for distribution, embraced in or belonging to any inheritance, devise, bequest, legacy, or gift, subject to the tax thereon as imposed by section 1191, shall deduct the tax therefrom, and within thirty days thereafter he shall pay over the same to the state treasurer, as herein provided. If such property be not in money, he shall collect the tax on such inheritance, devise, bequest, legacy, or gift, upon the appraised value thereof from the person entitled thereto. He shall not deliver, or be compelled to deliver, any property embraced in any inheritance, devise, bequest, legacy, or gift, subject to tax under this act, to any person until he shall have collected the tax thereon. (Laws 1903, p. 49; 1 Lord's Laws, p. 677.)

#### § 1041. Payment to State Treasurer—Receipts.

Sec. 1195. The tax imposed by this act upon inheritances, devises, bequests, or legacies, shall be payable to the state treasurer, and the treasurer shall give the executor, administrator, trustee, or person paying such tax, a receipt, as provided by subdivision 4, section 2638, whereupon it shall be a proper voucher in the settlement of his accounts. No executor, administrator, or trustee shall be entitled to a final accounting of an estate in the settlement of which a tax may become due under the provisions of this act, unless he shall produce a receipt so sealed and countersigned, or a copy thereof, certified by the said treasurer, or unless a bond shall have been filed, as prescribed by section 1203. All taxes paid into the state treasury under the provisions of this

section shall belong to and be a part of the inheritance tax fund of the state; provided, whenever the amount of money in this fund exceeds \$10,000, then all moneys in excess of \$5,000 shall be transferred to the general fund. (Laws 1903, p. 49; 1 Lord's Laws, p. 677.)

#### § 1042. Lien of Tax.

Sec. 1196. Every tax imposed by this act shall be a lien upon the property embraced in any inheritance, devise, bequest, legacy, or gift, until paid, and the person to whom such property is transferred, and the administrators, executors, and trustees of every estate embracing such property shall be personally liable for such tax until its payment, to the extent of the value of such property; and provided further, that all inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be conclusively presumed to be paid and cease to be a lien as against the estate, or any part thereof, of the decedent. (Laws 1903, p. 49; 1 Lord's Laws, p. 678.)

#### § 1043. Interest and Discount.

Sec. 1197. If such tax is paid within eight months from the accruing thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eight months from the accruing thereof, interest shall be charged and collected thereon at the rate of eight per centum per annum from the time the tax is due and payable, unless by reason of claims upon the estate, necessary litigation, or other unavoidable delay, such tax cannot be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the time from the accruing thereof until the cause of such delay is removed, after which eight per centum shall be charged. In all cases when a bond shall be given, under the provisions of section 1203, interest shall be charged at the rate of six per centum from the accrual of the tax until the date of the payment thereof. (Laws 1903, p. 49; 1 Lord's Laws, p. 678.)

#### § 1044. Sale of Property to Pay Tax.

Sec. 1198. Every executor, administrator, or trustee shall have full power to sell so much of the property embraced in any inheritance, devise, bequest, or legacy, as will enable him to pay the tax imposed by this act, in the same manner as he might be entitled by law to do for the payment of the debts of a testator or intestate. (Laws 1903, p. 49; 1 Lord's Laws, p. 678.)

#### § 1045. Legacy for Limited Period or Charge upon Real Estate.

Sec. 1199. If any bequest or legacy shall be charged upon or payable out of any property, the heir or devisee shall deduct such tax therefrom and pay such tax to the administrator, executor, or trustee, and the tax shall remain a lien or charge on such property until paid; and the payment thereof shall be enforced by the executor, administrator, or trustee in the same manner that payment of the bequest or legacy might be enforced; or by the prosecuting attorney under section 1217. If any bequest or legacy shall be given in money for a limited period, the administrator, executor, or trustee shall

retain the tax upon the whole amount; but, if it be not in money, he shall make application to the court having jurisdiction of an accounting by him to make an appointment [apportionment], if the case requires, of the sum to be paid into his hands by such legatee or beneficiary, and for such further order relative thereto as the case may require. (Laws 1903, p. 49; 1 Lord's Laws, p. 678.)

**§ 1046. Refund of Tax Erroneously Paid.**

Sec. 1200. When any tax imposed by this act shall have been erroneously paid, wholly or in part, the person paying the same shall be entitled to refundment of the amount so erroneously paid, and the secretary of state shall, upon satisfactory proofs presented to him of the facts relating thereto, draw his warrant upon the state treasurer for the amount thereof in favor of the person entitled thereto, payable from the inheritance tax fund; provided, however, that all applications for such refunding of erroneous taxes shall be made within three years from the payment thereof. (Laws 1903, p. 49; 1 Lord's Laws, p. 679.)

**§ 1047. Transfer of Stock or Obligations by Foreign Executor.**

Sec. 1201. If a foreign executor, administrator, or trustee shall assign or transfer any stock or obligations in this state standing in the name of the decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the state treasurer on or before the transfer thereof, and no such assignment or transfer shall be valid unless such tax is paid. (Laws 1903, p. 49; 1 Lord's Laws, p. 679.)

**§ 1048. Delivery of Deposits or Securities—Notice.**

Sec. 1202. No safe deposit company, trust company, bank, corporation, or other institution, person or persons, holding securities or assets of a decedent, or corporation in which said decedent, at the time of his death, owned any stock, shall deliver or transfer the same to the executors, administrators, or legal representatives of said decedent, or upon their order or request, unless notice of the said time and place of such intended transfer be served upon the state treasurer in writing at least five days prior to the said transfer; and it shall be lawful for the said state treasurer, personally or by representative, to examine said securities prior to the time of such delivery or transfer. If upon such examination the state treasurer, or his said representative, shall, for any cause, deem it advisable that such securities or assets should not be immediately delivered or transferred, he may forthwith, notify, in writing, such company, bank, institution, or person to defer delivery or transfer thereof for a period not to exceed ten days from the date of such notice, and thereupon it shall be the duty of the party notified to defer such delivery until the time stated in such notice, or until the revocation thereof within such ten days; failure to serve the notice first above mentioned or allow such examination, or to defer the delivery of such securities or assets for the time stated in the second of said notices, shall render said safe deposit company, trust company, corporation, bank, or other institution, person or persons, liable to the payment of the tax due on said securities or assets, pursuant to the provisions of this act. (Laws 1903, p. 49; 1 Lord's Laws, p. 679.)

**§ 1049. Payment Deferred—Bond.**

Sec. 1203. Any person or corporation beneficially interested in any property chargeable with a tax under section 1191, and executors, administrators, and trustees thereof, may elect, within six months from the death of the decedent, not to pay such tax until the person or persons beneficially interested therein shall come into actual possession or enjoyment thereof. If it be personal property, the person or persons so electing shall give a bond to the state in the penalty of three times the amount of such tax, with such sureties as the county judge of the proper county may approve, conditioned for the payment of such tax and interest thereon, at such time and period as the person or persons beneficially interested therein may come into actual possession or enjoyment of such property, which bond shall be executed and filed, and a full return of such property upon oath made to the county court within six months from the date of transfer thereof, as herein provided, and such bond must be renewed every five years. (Laws 1903, p. 49; 1 Lord's Laws, p. 680.)

**§ 1050. Bequest to Executor in Lieu of Compensation.**

Sec. 1204. Whenever a decedent appoints one or more executors or trustees, and, in lieu of their allowance or commission, makes a bequest or devise of property to them, which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to such tax, and the court having jurisdiction of their accounts, upon its own motion, or on the application of the state treasurer, shall fix such compensation. (Laws 1903, p. 49; 1 Lord's Laws, p. 680.)

**§ 1051. Jurisdiction of County Court.**

Sec. 1205. The county court of every county in this state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under this act, or to give ancillary letters thereon, or to appoint a trustee of such estate, or any part thereof, shall have jurisdiction to hear and determine all questions arising under the provisions of this act, and to do any act in relation thereto authorized by law to be done by such court in other matters or proceedings coming within his jurisdiction; and if two or more county courts shall be entitled to exercise any such jurisdiction, the county court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other county court. (Laws 1903, p. 49; 1 Lord's Laws, p. 680.)

**§ 1052. Notice to State Treasurer of Transfer—Valuation of Property.**

Sec. 1206. The judge of the county court having jurisdiction of the estate of any decedent shall, within ten days after the filing of a will or the application for letters of administration, or the granting of letters testamentary or of letters of administration, if in his opinion said estate is subject to a tax under any of the provisions of this act, cause the county clerk to send to the treasurer of the state a certificate of the filing of such will or application, or the granting of such letters of administration. The court shall thereupon, and as soon as practicable after the granting of any such letters, proceed to ascer-

tain and determine the value of every inheritance, devise, bequest, or legacy embraced in or payable out of the estate in which such letters are granted, and the tax due thereon. The state treasurer shall have the same right to apply for letters of administration as that conferred by law upon creditors. (Laws 1903, p. 49; Laws 1909, p. 60; 1 Lord's Laws, p. 680.)

**§ 1053. Duty of Executor to Make Inventory and Appraisement.**

Sec. 1207. It shall be the duty of the executor, administrator, or trustee of every estate, within one month from the date of his appointment, or, if a trustee, from the acceptance of this trust, or, if necessary, such further time as the county clerk or judge may allow, make an inventory, verified by his own oath, of all the real and personal property of the deceased which shall come to his possession or knowledge, any will or direction of the decedent to the contrary notwithstanding, and to cause the same to be appraised, as by law required, and filed with the clerk of the court having jurisdiction of said estate. (Laws 1903, p. 49; 1 Lord's Laws, p. 681.)

**§ 1054. Extension of Time for Appraisement.**

Sec. 1208. Whenever, by reason of the complicated nature of an estate, or by reason of the confused condition of the decedent's affairs, it is impracticable for the executor, administrator, trustee, or beneficiary of said estate to file with the clerk of the court a full, complete, and itemized inventory of the personal assets belonging to the estate within the time required by statute for filing inventories of estates of decedents, the court may, upon the application of such representative or parties in interest, extend the time for filing the appraisement for a period not to exceed three months beyond the time fixed by law, or such further time as may be necessary upon good cause shown. (Laws 1903, p. 49; 1 Lord's Laws, p. 681.)

**§ 1055. Inventory and Appraisement to be Sent to State Treasurer.**

Sec. 1209. Every executor or administrator, or trustee of any estate subject to the tax herein provided, shall, at least ten days prior to the first appraisement thereof, as provided by law, notify the state treasurer in writing of the time and place of such appraisement, and shall file due proof of such notice with a copy thereof with the clerk of the court having jurisdiction of such estate or trust. Every executor, administrator, or trustee, within ten days after such appraisement, or appraisement of any beneficial interest or reappraisement thereof, and before payment and distribution to the legatees or any parties entitled to beneficiary interest therein, shall make and render to the said state treasurer a copy of the said inventory and appraisement, duly certified as such by the clerk of the court having jurisdiction of said estate, and shall also make and file with the said state treasurer a schedule, list, or statement, in duplicate, of the amount of such legacy or distributive share, together with the amount of tax which has accrued or will accrue thereon, verified by his oath or affirmation, to be administered and certified thereon by some magistrate or officer having lawful power to administer such oaths, in such form and manner as may be prescribed by the state treasurer, which schedule, list, or statement shall contain the names of each and every person entitled

to any beneficiary interest therein, together with the clear value of such interest, as found and determined by the court having jurisdiction of said estate. One of said schedules shall be kept and retained by the state treasurer, and the other delivered by him to the secretary of state. (Laws 1903, p. 49; 1 Lord's Laws, p. 681.)

**§ 1056. Court may Act on Appraisement or Require Another.**

Sec. 1210. In ascertaining and determining the value of any inheritance, devise, bequest, or legacy embraced in or payable out of any estate or trust, and the tax due thereon, the court may act upon the inventory and appraisement of such estate as prepared and filed by the executor, administrator, or trustee thereof, pursuant to law, or it may require an appraisement or reappraisement, as herein provided, of the true and full value of the property embraced in any inheritance, devise, bequest, or legacy, subject to the payment of any tax imposed by this act. (Laws 1903, p. 49; 1 Lord's Laws, p. 682.)

**§ 1057. Appointment of Appraisers.**

Sec. 1211. The county court may, in any matter mentioned in sections 1206, 1207, and 1208, or if no inventory or appraisement has been made, or if it deem it for any cause insufficient or inadequate, either upon its own motion or upon the application of any interested party, including the state treasurer, and as often as and when occasion requires, appoint one or more persons as appraisers to appraise the true and full value of the property embraced in any inheritance, devise, bequest, or legacy subject to the payment of any tax imposed by this act. (Laws 1903, p. 49; 1 Lord's Laws, p. 682.)

**§ 1058. Time for Appraisement—Life and Future or Contingent Estates.**

Sec. 1212. Every inheritance, devise, bequest, legacy, or gift, upon which a tax is imposed under this title, shall be appraised at its full and true value immediately upon the death of the decedent, or as soon thereafter as may be practicable; provided, however, that when such devise, bequest, legacy, or gift shall be of such a nature that its full and true value cannot be ascertained at such time, it shall be appraised in like manner at the time when such value first becomes ascertainable. The value of every future or contingent or limited estate, income, interest, or annuity dependent upon any life or lives in being shall be determined by the rules or standards of mortality, and of value commonly used by actuaries' combined experience tables, except that the rates of interest on computing the present value of all future and contingent interests or estates shall be four per centum per annum interest. (Laws 1903, p. 49; 1 Lord's Laws, p. 682.)

**§ 1059. Appraisement—Time and Place—Fees of Appraiser.**

Sec. 1213. The county court shall by order fix the time and place when the appraisers appointed under the provisions of section 1210 [1211] shall make said appraisement. The county clerk shall forthwith give notice to the state treasurer, and to all persons known to have a claim or interest in the property, inheritance, devise, bequest, legacy, or gift to be appraised, and to such persons as the probate court may by order direct, of the time and

place when said appraisers will make such appraisal. Such notice shall be given by mail. They shall, at such time and place, appraise the same at its full and true value, as herein prescribed, and for that purpose the said appraisers are authorized to issue subpoenas and to compel the attendance of witnesses before them, and to make [take] evidence of such witnesses under oath concerning such property and the value thereof, and they shall make report thereof, and of such value in writing to the said county court, together with the testimony of the witnesses examined, and such other facts in relation thereto, and to the said matter as said county court may order or require. Every appraiser shall be entitled to compensation at the rate of \$3.00 per day for each day actually and necessarily employed in such appraisal, and his actual and necessary traveling expenses, and such witnesses, and the officer or person serving any such subpoena, shall be entitled to the same fees as those allowed witnesses or sheriffs for similar services in courts of record. The compensation and fees claimed by any person for services performed under this act shall be approved by the county judge, who shall certify the amount thereof, as so approved, to the secretary of state, who shall examine the same, and, if found correct, he shall draw his warrant upon the state treasurer for the amount thereof in favor of the person entitled thereto, payable from the inheritance tax fund. (Laws 1903, p. 49; 1 Lord's Laws, p. 683.)

#### **§ 1060. Report of Appraisers—Filing in County Court.**

Sec. 1214. The report of the appraisers shall be filed with the county court and from such report, and other proof relating to any such estate before the county court, the court shall forthwith, as of course, determine the full and true value of all such estates and the amount of the tax to which the same are liable; or the county court may so determine the full and true value of all such estates, and the amount of tax to which the same are liable, without appointing appraisers, as herein provided. (Laws 1903, p. 49; 1 Lord's Laws, p. 683.)

#### **§ 1061. Notice of Determination of Value.**

Sec. 1215. The county court shall immediately give notice upon the determination of the value of any inheritance, devise, bequest, legacy, or gift, which is taxable under this act and of the tax to which it is liable, to all parties known to be interested therein, including the secretary of state and the state treasurer. Such notices shall be given by mail. (Laws 1903, p. 49; 1 Lord's Laws, p. 683.)

#### **§ 1062. Reappraisement and Assessment.**

Sec. 1216. Within thirty days after the assessment and determination by the county court of any tax imposed by this act, the state treasurer, or any person interested therein, may file with the said court objections thereto in writing, and praying for a reassessment and redetermination of such tax. Upon any objection being so filed, the county court shall appoint a time for the hearing thereof, and cause notice of such hearing to be given by mail to the state treasurer, and all parties interested, at least ten days

before the hearing thereof; at the time appointed in such notice, the court shall proceed to hear such objection, and any evidence which may be offered in support thereof or opposition thereto; and if, after such hearing, the said court finds the amount at which the property is appraised is its market value, and the appraisalment was made fairly and in good faith, it shall approve such appraisalment; but if it finds that the appraisalment was made at a greater or less sum than the market value of the property, or that the same was not made fairly or in good faith, it shall, by order, set aside the appraisalment and determine such value. The state treasurer, or anyone interested in the property appraised, may appeal to the circuit court from the judgment, order, and decree of the county court in the premises, and may appeal to the supreme court from the order, judgment, or decree of the circuit court in the same manner as is provided by law for appeals from judgments and orders of the county court and circuit court. All evidence heard on such reappraisalment shall be reduced to writing and filed with the clerk of the court. All appeals taken from the judgment or decree of the court shall be had and tried on appeal in the same manner and with like effect as appeals in suits in equity are now heard and tried. (Laws 1903, p. 49; 1 Lord's Laws, p. 684.)

#### § 1063. Duty of Treasurer When Tax Unpaid.

Sec. 1217. If the state treasurer shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the persons liable therefor to pay the same, he shall notify the prosecuting attorney of the county in writing of such failure or neglect, and such prosecuting attorney, if he have probable cause to believe that such tax is due and unpaid, shall apply to the county court for a citation citing the persons liable to pay such tax to appear before the court on the day specified, not more than thirty days from the date of such citation, unless the court, for good cause shown, grants a longer time, and show cause why the tax should not be paid. The county court, upon such application, and whenever it shall appear to him that any such tax accruing under this act has not been paid as required by law, shall issue such citation, and a service of such citation, and the time, manner, and proof thereof, and the hearing and determination thereon, shall conform as near as may be to the provisions of the probate practice; provided, that where no provision is made for manner of such service or proof of same, the court or judge, at the time such order or citation is issued, shall direct the manner of giving notice and proof of the same; and whenever it shall appear that any such tax is due and payable and the payment thereof cannot be enforced under the provisions of this act in said county court, the person or corporation from whom the same is due is hereby made liable to the state for the amount of such tax, and it shall be the duty of the prosecuting attorney of the proper county to sue for, in the name of the state, and enforce the collection of such tax; and all taxes so collected shall be forthwith paid into the inheritance tax fund of the state. It shall be the duty of said prosecuting attorney to appear for and represent the state treasurer on the hearing of such citation, or of any other hearing. Whenever the county



judge shall certify that there was probable cause for issuing a citation and taking the proceeding specified in the section, the state treasurer shall file with the secretary of state a duly verified itemized account of all expenses incurred for the service of the citation, and other lawful disbursements not otherwise paid, and the secretary of state shall thereupon draw his warrant upon the state treasurer for the payment thereof, and in favor of said treasurer, payable from the inheritance tax fund. (Laws 1903, p. 49; 1 Lord's Laws, p. 684.)

**§ 1064. Books and Forms to be Furnished by Secretary of State—Entries by Courts.**

Sec. 1218. The secretary of state shall furnish to each county court a book, which shall be a public record, and in which shall be entered by the judge or clerk of said court, under the direction of said judge, the name of every decedent upon whose estate an application has been made for the issue of letters of administration or letters testamentary, or ancillary letters; the date and place of death of such decedent; the estimated value of the property of such decedent; names and places of residence and relationship to decedent of the heirs at law of such decedent; the names and places of residence of the legatees, devisees, and other beneficiaries in any will of such decedent; the amount of each legacy, and the estimated value of any property devised therein, and to whom devised. These entries shall be made from data contained in the papers filed on any such application, or in any proceeding relating to the estate of the deceased. The county judge, or the clerk of the court under his direction, shall also enter in such book the amount of the property of any such decedent, as shown by the inventory thereof, when made and filed in his office, and the returns made by any appraiser appointed by him under this act, and the value of all inheritances, devises, bequests, legacies, and gifts inherited from such decedent, or given by such decedent in his will, or otherwise, as fixed by the probate court; and the tax assessed thereon, and the amounts of any receipts for payment thereof filed in said court. The secretary of state shall also furnish to each county court forms for the reports to be made by such county judge, which shall correspond with the entry to be made in such book. He shall also furnish, for the use of the courts and appraisers throughout the state, tables showing the average expectancy of life, and the value of annuities of life and term estates, and the present worth or value of remainders and reversions, as prescribed in section 1210 [1212]. The taxable value of life or term, deferred or future estates, shall be computed at the rate of four per cent per annum. (Laws 1903, p. 49; 1 Lord's Laws, p. 685.)

**§ 1065. Reports by Judges and Custodian of Deeds and Records.**

Sec. 1219. Each county judge shall, on the first day of January, April, July, and October of each year, under the seal of the court, make a report, in duplicate, upon the forms furnished by the secretary of state, containing all the data and matters required to be entered in such book, one of which shall be immediately transmitted to the state treasurer, and the other to the secretary of state. The county clerk, or recorder of conveyances, of

each county having custody of records of deeds shall, at the same time, make reports, in duplicate, containing a statement of any conveyance filed or recorded in his office of any property which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor, with the name and place of residence of the vendor and vendee, and a description of the property transferred, as shown by such instrument, one of which duplicates shall be immediately transmitted to the state treasurer, and the other to the secretary of state. (Laws 1903, p. 49; 1 Lord's Laws, p. 686.)

**§ 1066. Receipts to be Furnished by State Treasurer.**

Sec. 1220. It shall be the duty of the state treasurer, upon the payment of the sum of twenty-five cents, to issue to any person demanding the same, a copy of a receipt that may have been given by such treasurer for the payment of any tax under this act, which receipt shall designate upon what real property, if any, of which any decedent may have died seised, such tax shall have been paid, by whom paid, and whether in full of such tax. Such receipts may be recorded in the office of the officers having control and charge of the deed records of the county in which such property is situated, in a book to be kept by him for that purpose, which shall be labeled "transfer tax." (Laws 1903, p. 49; 1 Lord's Laws, p. 686.)

**§ 1067. Recording of Receipts.**

Sec. 1221. The county commissioners of each county shall provide a book for the recording of said receipts. The officer of each county having control and charge of the deed records of each county shall charge and collect, at the time said receipt is presented for record, for the use of the county, the sum of twenty-five cents for recording each receipt. The sum paid to the state treasurer for copies of receipts shall be paid by him into the inheritance tax fund. (Laws 1903, p. 49; 1 Lord's Laws, p. 686.)

**§ 1068. Compromise or Settlement of Tax.**

Sec. 1222. Whenever an estate charged, or sought to be charged, with the inheritance tax, is of such a nature or is so disposed that the liability of the estate is doubtful, or the value thereof cannot with reasonable certainty be ascertained under the provisions of law, the state treasurer may, with the written approval of the attorney general, which approval shall set forth the reasons therefor, compromise with the beneficiaries or representatives of such estates, and compound the tax thereon; but said settlement must be approved by the county court having jurisdiction of the estate, and after such approval the payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate. (Laws 1903, p. 49; 1 Lord's Laws, p. 686.)

**§ 1069. Reports to be Furnished by Executor.**

Sec. 1223. Administrators, executors, or trustees of the estates subject to the inheritance tax shall, when demanded by the state treasurer, send to such treasurer certified copies of such parts of their reports as may be

demande by him, and, upon refusal of said parties to comply with the treasurer's demand, it is the duty of the clerk of the court to comply with such demand, and the expense of making such copies and transcripts shall be charged against the estate, as are other costs in probate. (Laws 1903, p. 49; 1 Lord's Laws, p. 687.)

**§ 1070. Appellate Proceedings.**

Sec. 1224. Appeals may be taken to the circuit court from all final orders, judgments, and decrees, entered under the provisions of this act, in the same manner and with the same effect as other appeals are taken from final orders and judgments made or rendered by the county court. All such appeals shall be had and tried in the same manner and with like effect as appeals in suits in equity are now heard and tried. (Laws 1903, p. 49; 1 Lord's Laws, p. 687.)

**§ 1071. Failure to Produce Will—Penalty.**

Sec. 1225. Any person who shall willfully sequester or secrete any last will or testament of a person then deceased, or who, having the custody of any such will and testament, shall willfully fail or neglect to produce and deliver the same to the judge of the county court having jurisdiction of its probate, or to any executor named therein, within a reasonable time after the death of the testator thereof, with intention to injure or defraud any person interested therein, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding \$500. (Laws 1903, p. 49; 1 Lord's Laws, p. 687.)

**§ 1072. Administering Personal Estate Without Proving Will—Penalty.**

Sec. 1226. Every person who shall administer the personal estate of any person dying after the passage of this act, or any part thereof, without proving the will of the deceased or taking out letters of administration of such personal estate within six calendar months after the death of the person so dying, shall be punished by imprisonment in the county jail not more than one year or by a fine not exceeding \$500. (Laws 1903, p. 49; 1 Lord's Laws, p. 687.)

**§ 1073. Notice to State Treasurer of Transfer.**

Sec. 1227. Whenever any of the real estate of which any decedent may die seised shall pass to any body politic or corporate, or to any person or persons, or in trust for them, or some of them, it shall be the duty of the executor, administrator, or trustee of such decedent to give information thereof in writing to the state treasurer within three months after they undertake the execution of their expected duties, or, if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge. (Laws 1903, p. 49; 1 Lord's Laws, p. 687.)

**§ 1074. Property Subject to Tax.**

Sec. 1228. Except as to real property located outside of the state passing in fee from the decedent owner, the tax imposed under section 1192 shall hereafter be assessed against and be collected from property of every kind,

which, at the death of the decedent owner, is subject to, or thereafter, for the purpose of distribution, is brought into this state and becomes subject to the jurisdiction of the courts of this state for distributive purposes, or which was owned by any decedent domiciled within the state at the time of the death of such decedent, even though the property of said decedent so domiciled was situated outside of the state. (Laws 1903, p. 49; 1 Lord's Laws, p. 688.)

**§ 1075. Property in State Belonging to Nonresident Decedent.**

Sec. 1229. In case of any property belonging to a foreign estate, which estate in whole or in part is liable to pay an inheritance tax in this state, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. In the event that the executor, administrator, or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction, and with the state treasurer, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate. (Laws 1903, p. 49; 1 Lord's Laws, p. 688.)

**§ 1076. Compensation of Officers.**

Sec. 1230. Except as otherwise provided in this act, no officer shall receive any additional compensation to that now allowed him by law, by reason of any duties imposed upon him by the provisions of this act. (Laws 1903, p. 49; 1 Lord's Laws, p. 686.)

**§ 1077. Payment of Expenses and Disbursements.**

Sec. 1231. The state treasurer shall file with the secretary of state a duly verified itemized account of all expenses incurred and disbursements made by him in examining or having examined any securities under section 1202, or any other expense actually incurred by him in enforcing or carrying out the provisions of this act, and the secretary of state shall thereupon draw his warrant upon the state treasurer for the payment thereof and in favor of said treasurer, payable from the inheritance tax fund. (Laws 1903, p. 49; 1 Lord's Laws, p. 688.)

**§ 1078. Appraiser Taking More Than Regular Fees—Penalty.**

Sec. 1232. Any appraiser appointed by this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any other person liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors, he shall be fined not less than \$250 nor more than \$500, and imprisoned not exceeding ninety days, and, in addition thereto, the county judge shall dismiss him from such service. (Laws 1903, p. 49; 1 Lord's Laws, p. 689.)

## CHAPTER L.

### PENNSYLVANIA STATUTE.

(1 *Purdon's Digest*, pp. 603-610; *Laws of 1905*, p. 253; *Laws of 1911*, p. 112.)

- § 1079. Estates Subject to Tax—Rates.
- § 1080. Estates Subject to Tax—Rates.
- § 1081. Executor not Discharged Until Tax Paid.
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- § 1083. Estates of Limited Value Exempt.
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- § 1109. Application for Repayment of Tax.
- § 1110. Refund of Tax When Estate was not Subject Thereto.
- § 1111. Bequest for Burial Lot.
- § 1112. Time When Statute Takes Effect.

#### § 1079. Estates Subject to Tax—Rates.

Sec. 1. All estates, real, personal and mixed, of every kind whatsoever, situated within this state, whether the person or persons dying seised thereof be domiciled within or out of this state, and all such estates situated in another state, territory or country, when the person or persons, dying seised thereof, shall have their domicile within this commonwealth, passing

from any person, who may die seised or possessed of such estates, either by will, or under the intestate laws of this state, or any part of such estate or estates, or interest therein, transferred by deed, grant, bargain or sale made or intended to take effect, in possession or enjoyment after the death of the grantor or bargainor, to any person or persons, or to bodies corporate or politic, in trust or otherwise, other than to or for the use of father, mother, husband, wife, children, and lineal descendants born in lawful wedlock, children of a former husband or wife, or the wife or widow of the son of the person dying seised or possessed thereof, shall be and they are hereby made subject to a tax of five dollars on every hundred dollars of the clear value of such estate or estates, and at and after the same rate for any less amount to be paid to the use of the commonwealth; and all owners of such estates, and all executors and administrators and their sureties, shall only be discharged from liability for the amount of such taxes or duties, the settlement of which they may be charged with, by having paid the same over for the use aforesaid, as hereinafter directed; provided, that no estate which may be valued at a less sum than two hundred and fifty dollars shall be subject to the duty or tax. (Laws 1905, p. 258; P. L. 79; Pur. Dig., vol. 1, p. 603.)

**§ 1080. Estates Subject to Tax—Rates.**

Sec. 1a. All estates, real, personal and mixed, of every kind whatsoever, situated within this state, whether the person or persons dying seised thereof be domiciled within or out of this state, and all such estates situated in another state, territory or country, when the person or persons dying seised thereof shall have their domicile within this commonwealth, passing from any person who may die seised or possessed of such estates, either by will or under the intestate laws of this state, or any part of such estate or estates, or interest therein, transferred by deed, grant, bargain or sale, made or intended to take effect, in possession or enjoyment after the death of the grantor or bargainor, to any person or persons, or to bodies corporate or politic, in trust or otherwise, other than to or for the use of father, mother, husband, wife, children, and lineal descendants born in lawful wedlock, children of a former husband or wife, or the wife or widow of the son of the person dying seised or possessed thereof, shall be, and they are hereby made, subject to a tax of five dollars on every hundred dollars of the clear value of such estate or estates, and at and after the same rate for any less amount, to be paid to the use of the commonwealth; and all owners of such estates, and all executors and administrators and their sureties, shall only be discharged from liability for the amount of such taxes or duties, the settlement of which they may be charged with, by having paid the same over for the use aforesaid, as hereinafter directed; provided, that no estate which may be valued at a less sum than two hundred and fifty dollars shall be subject to the duty or tax. (Laws 1905, p. 259; P. L. 79; Pur. Dig., vol. 1, p. 603.)

**§ 1081. Executor not Discharged Until Tax Paid.**

Sec. 2. All owners of such estates, and all executors and administrators and their sureties, shall only be discharged from liability for the amount

of such taxes or duties, the settlement of which they may be charged with, by having paid the same over for the use aforesaid, as hereinafter directed. (P. L. 79; Pur. Dig., vol. 1, p. 605.)

**§ 1082. Transfers not Subject to Tax.**

Sec. 2a. All estates, real, personal and mixed, of every kind whatsoever, situated within this state, whether the person or persons dying seised thereof be domiciled within or out of this state; and all such estates situated in another state, territory, or country, when the person or persons dying seised thereof shall have their domicile within this commonwealth; passing from any adopted parent, who may die seised or possessed of such estates, either by will or under the intestate laws of this state, or any part of such estate or estates, or interest therein, transferred by deed, grant, bargain, or sale, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor, to or for the use of any legally adopted child or any legally adopted children,—shall not be subject to the collateral inheritance tax of five dollars on every hundred dollars of the clear value of such estate or estates, to the use of the commonwealth. All acts and parts of acts inconsistent herewith be and the same are hereby repealed. Approved the 5th day of May, 1911. (Laws 1911, p. 112.)

**§ 1083. Estates of Limited Value Exempt.**

Sec. 3. No estate which may be valued at a less sum than two hundred and fifty dollars shall be subject to the duty or tax. (P. L. 79; Pur. Dig., vol. 1, p. 605.)

**§ 1084. Bequest to Executor in Lieu of Compensation.**

Sec. 4. Where a testator appoints or names one or more executors, and makes a bequest or devise of property to them, in lieu of their commissions or allowances, or appoints them his residuary legatees, and said bequests, devises or residuary legacies exceed what would be a fair compensation for their services such excess shall be subject to the payment of the collateral inheritance tax; the rate of compensation to be fixed by the proper courts having jurisdiction in the case. (P. L. 79; Pur. Dig., vol. 1, p. 605.)

**§ 1085. Estate for Years or for Life and Remainder.**

Sec. 5. In all cases where there has been or shall be a devise, descent or bequest to collateral relatives or strangers, liable to the collateral inheritance tax, to take effect in possession, or come into actual enjoyment after the expiration of one or more life estates, or a period of years, the tax on such estates shall not be payable, nor interest begin to run thereon, until the person or persons liable for the same shall come into actual possession of such estate, by the termination of the estates for life or years, and the tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner as aforesaid; provided, that the owner shall have the right to pay the tax at any time prior to his coming into possession and, in such cases, the tax shall be assessed on the value of the estate at the time of the payment of the tax, after deducting the value of

the life estate or estates for years; and provided further, that the tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid. And the owner of any personal estate shall make a full return of the same to the register of wills of the proper county, within one year from the death of the decedent, and within that time enter into security for the payment of the tax, to the satisfaction of such register; and in case of failure so to do, the tax shall be immediately payable and collectible. (P. L. 79; Pur. Dig., vol. 1, p. 605.)

#### § 1086. Interest and Discount.

Sec. 6. If the collateral inheritance tax shall be paid within three months after the death of the decedent, a discount of five per centum shall be made and allowed; and if the said tax is not paid at the end of one year from the death of the decedent, interest shall then be charged at the rate of twelve per centum per annum on such tax; but where from claims made upon the estate, litigation or other unavoidable cause of delay, the estate of any decedent or part thereof cannot be settled up at the end of the year from his or her decease, six per centum per annum shall be charged upon the collateral inheritance tax, arising from the unsettled part thereof, from the end of such year until there be default; provided further, that where real or personal estate withheld by reason of litigation or other cause of delay in manner aforesaid from the parties entitled thereto, subject to said tax, has not been, or shall not be productive to the extent of six per centum per annum, they shall not be compelled to pay a greater amount as interest to the commonwealth than they may have realized, or shall realize from such estate during the time the same has been or shall be withheld as aforesaid. (P. L. 79; Pur. Dig., vol. 1, p. 606.)

#### § 1087. Collection of Tax by Executor.

Sec. 7. The executor, or administrator, or other trustee, paying any legacy or share in the distribution of any estate, subject to the collateral inheritance tax, shall deduct therefrom at the rate of five dollars in every hundred dollars, upon the whole legacy or sum paid; or if not money, he shall demand payment of a sum to be computed at the same rate, upon the appraised value thereof, for the use of the commonwealth; and no executor or administrator shall be compelled to pay or deliver any specific legacy or article to be distributed, subject to tax, except on the payment into his hands of a sum computed on its value as aforesaid; and in case of neglect or refusal on the part of said legatee to pay the same, such specific legacy or article, or so much thereof as shall be necessary, shall be sold by such executor or administrator at public sale, after notice to such legatee, and the balance that may be left in the hands of the executor or administrator shall be distributed, as is or may be directed by law; and every sum of money retained by any executor or administrator, or paid into his hands on account of any legacy or distributive share, for the use of the commonwealth, shall be paid by him without delay. (P. L. 79; Pur. Dig., vol. 1, p. 606.)

#### § 1088. Legacies for Limited Period or upon Contingency.

Sec. 8. If the legacy subject to the collateral inheritance tax be given to any person for life, or for a term of years, or for any other limited



period, upon a condition or contingency, if the same be money, the tax thereon shall be retained upon the whole amount; but if not money, application shall be made to the orphans court having jurisdiction of the accounts of the executors or administrators to make apportionment, if the case requires it, of the sum to be paid by such legatees, and for such further order relative thereto as equity shall require. (P. L. 79; Pur. Dig., vol. 1, p. 606.)

**§ 1089. Legacy Charged upon Real Estate.**

Sec. 9. Whenever such legacy shall be charged upon or payable out of real estate, the heir or devisee, before paying the same, shall deduct therefrom at the rate aforesaid, and pay the amount so deducted to the executor; and the same shall remain a charge upon such real estate until paid, and the payment thereof shall be enforced by the decree of the orphans court, in the same manner as the payment of such legacy may be enforced. (P. L. 79; Pur. Dig., vol. 1, p. 607.)

**§ 1090. Notice to County Register of Transfer.**

Sec. 10. Whenever any real estate of which any decedent may die seized shall be subject to the collateral inheritance tax, it shall be the duty of executors and administrators to give information thereof to the register of the county, where administration has been granted, within six months after they undertake the execution of their respective duties, or if the fact be not known to them within that period, within one month after the same shall have come to their knowledge; and it shall be the duty of the owners of such estates, immediately upon the vesting of the estates, to give information thereof to the register having jurisdiction of the granting of administration. (P. L. 79; Pur. Dig., vol. 1, p. 607.)

**§ 1091. Receipts for Payment.**

Sec. 11. It shall be the duty of any executor or administrator, on the payment of collateral inheritance tax, to take duplicate receipts from the register, one of which shall be forwarded forthwith to the auditor general, whose duty it shall be to charge the register receiving the money with the amount, and seal with the seal of his office, and countersign the receipt and transmit it to the executor or administrator, whereupon it shall be a proper voucher in the settlement of the estate; but in no event shall an executor or administrator be entitled to a credit in his account by the register, unless the receipt is so sealed and countersigned by the auditor general. (P. L. 79; Pur. Dig., vol. 1, p. 607.)

**§ 1092. Transfer of Stocks or Loans by Foreign Executor.**

Sec. 12. Whenever any foreign executor, or administrator or trustee shall assign or transfer any stocks or loans in this commonwealth, standing in the name of the decedent, or in trust for a decedent, which shall be liable for the collateral inheritance tax, such tax shall be paid, on the transfer thereof, to the register of the county where such transfer is made; otherwise the corporation permitting such transfer shall become liable to pay such tax. (P. L. 79; Pur. Dig., vol. 1, p. 607.)

**§ 1093. Refund of Tax.**

Sec. 13. Whenever debts shall be proven against the estate of a decedent, after distribution of legacies from which the collateral inheritance tax has been deducted, in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator, if the said tax has not been paid into the state or county treasury, or by the county treasurer, if it has been so paid. (P. L. 79; Pur. Dig., vol. 1, p. 607.)

**§ 1094. Appraisers and Appraisement.**

Sec. 14. It shall be the duty of the register of wills of the county in which letters testamentary or of administration are granted to appoint an appraiser, as often as and whenever occasion may require, to fix the valuation of estates, which are or shall be subject to collateral inheritance tax; and it shall be the duty of the appraiser to make a fair and conscionable appraisement of such estates; and it shall further be the duty of such appraiser to assess and fix the cash value of all annuities and life estates growing out of said estates, upon which annuities and life estates the collateral inheritance tax shall be immediately payable out of the estate at the rate of such valuation; provided, that any person or persons, not satisfied with said appraisement, shall have the right to appeal within thirty days, to the orphans court of the proper county or city, on paying or giving security to pay all costs, together with whatever tax shall be fixed by said court; and, upon such appeal, said courts shall have jurisdiction to determine all questions of valuation and of the liability of the appraised estate for such tax, subject to the right of appeal to the supreme court as in other cases. (P. L. 79; Pur. Dig., vol. 1, p. 607.)

**§ 1095. Compensation of Appraisers.**

Sec. 15. From and after the passage of this act, the compensation of appraisers appointed by the registers of wills of the several counties of the commonwealth to fix the value of estates which are or may hereafter be subject to collateral inheritance tax shall be as follows, namely: For each and every day on which an appraiser shall actually be engaged in making appraisements of property subject to said tax, he shall receive the sum of two dollars; provided, that if, in the discharge of his duties, it shall be necessary for him, the said appraiser, to travel from his place of residence to appraise property subject to said tax, he shall be allowed such actual necessary traveling expenses as he may incur, which expenses shall be itemized in a sworn statement to be returned to the register and subject to the final approval of the auditor general. (P. L. 325; Pur. Dig., vol. 1, p. 608.)

**§ 1096. Appointment of Expert as Appraiser.**

Sec. 16. It is hereby further provided and enacted that when, by virtue of the complicated nature of an estate subject to the payment of collateral inheritance tax, the interest of the commonwealth shall require the appointment, as appraiser of said estate, of a person possessed of expert or technical knowledge to ascertain the value thereof, reasonable additional compensation

shall be allowed said appraiser for the exercise of such expert or technical knowledge, and in cases where, after the appointment of an appraiser to appraise the value of an estate subject to the payment of collateral inheritance tax, it shall appear that the proper appraisal of said estate will require the services of a person possessed of expert or technical knowledge whereof the appraiser appointed to appraise said estate is not possessed, he, the said appraiser, may employ the services of a person possessed of expert or technical knowledge to assist him in the appraisal of said estate, and for such services the person so employed shall receive reasonable compensation; provided, that in all such cases the register of wills appointing the appraiser shall certify to the auditor general, that there is actual necessity for the appointment of an appraiser possessed of expert or technical knowledge, or that the appraiser already appointed to appraise the estate in question should be assisted by a person possessed of such knowledge, and no person shall be appointed as such expert appraiser, or as expert assistant to an appraiser, without the approval of the auditor general of said appointment first had and obtained, nor shall any payment be made to any appraiser, or to any person employed by him, under this section, until an itemized statement of the services performed and compensation recommended shall have been rendered, under oath or affirmation, to the auditor general for his approval and shall have received the same; and provided further, that no clerk or other person employed in the office of a register of wills shall be appointed an expert appraiser of an estate subject to the payment of collateral inheritance tax, nor as an expert to assist the appraiser of such estate. (P. L. 325; Pur. Dig., vol. 1, p. 608.)

**§ 1097. Appraiser Taking More Than Regular Fee—Penalty.**

Sec. 17. It shall be a misdemeanor in any appraiser, appointed by the register to make an appraisal in behalf of the commonwealth, to take any fee or reward from any executor or administrator, legatee, next of kin or heir of any decedent and for any such offense the register shall dismiss him from such service, and, upon conviction in the quarter sessions, he shall be fined not exceeding five hundred dollars, and imprisoned not exceeding one year, or both, or either, at the discretion of the court. (P. L. 79; Pur. Dig., vol. 1, p. 608.)

**§ 1098. Records to be Kept by Register of Wills.**

Sec. 18. It shall be the duty of the register of wills to enter in a book, to be provided at the expense of the commonwealth, to be kept for that purpose and which shall be a public record, the returns made by all appraisers under this act, opening an account in favor of the commonwealth against the decedent's estate, and the register may give certificates of payment of such tax from such record. (P. L. 79; Pur. Dig., vol. 1, p. 608.)

**§ 1099. Report by Register to Auditor General.**

Sec. 19. It shall be the duty of the register to transmit to the auditor general, on the first day of each month, a statement of all returns made by appraisers during the preceding month, upon which the taxes remain unpaid, which statement shall be entered by the auditor general, in a book to be kept by him for that purpose. (P. L. 79; Pur. Dig., vol. 1, p. 608.)

**§ 1100. Proceedings to Enforce Tax.**

Sec. 20. Whenever any such tax shall have remained due and unpaid for one year, it shall be lawful for the register to apply to the orphans court, by bill or petition, to enforce the payment of the same; whereupon said court having caused due notice to be given to the owner of the real estate charged with the tax and to such other person as may be interested, shall proceed, according to equity, to make such decrees or orders for the payment of the said tax out of such real estates, as shall be just and proper. (P. L. 79; Pur. Dig., vol. 1, p. 609.)

**§ 1101. Citation to Parties in Case of Unpaid Tax.**

Sec. 21. If the register shall discover that any collateral inheritance tax has not been paid over according to law, the orphans court shall be authorized to cite the executors or administrators of the decedent, whose estate is subject to the tax, to file an account or to issue a citation to the executors, administrators or heirs, citing them to appear on a certain day and show cause why the said tax should not be paid; and when personal service cannot be had, notice shall be given for four weeks, once a week, in at least one newspaper published in said county; and if the said tax shall be found to be due and unpaid, the said delinquent shall pay said tax and costs. (P. L. 79; Pur. Dig., vol. 1, p. 609.)

**§ 1102. Employment of Attorney to Sue for Tax.**

Sec. 22. It shall be the duty of the register, or of the auditor general, to employ an attorney of the proper county to sue for the recovery and amount of such tax; and the auditor general is authorized and empowered, in settlement of accounts of any register, to allow him costs of advertising and other reasonable fees and expenses incurred in the collection of taxes. (P. L. 79; Pur. Dig., vol. 1, p. 609.)

**§ 1103. Compensation of Register for Collecting Tax.**

Sec. 23. The register of will of the several counties of this commonwealth, upon their filing with the auditor general the bond hereinafter required, shall be the agents of the commonwealth for the collection of the collateral inheritance tax; and for services rendered in collecting and paying over the same, the said agents shall be allowed to retain for their own use five per centum upon the collateral inheritance tax collected, if the said tax shall amount to a sum less than two hundred thousand dollars in any year; or four per centum upon the said tax, if the same shall amount to two hundred thousand dollars and less than three hundred thousand dollars in any year; or three per centum upon the said tax, if the tax collected shall amount to three hundred thousand dollars or more in any year; provided further, that this section shall not apply to the fees of the registers elected prior to the passage of this act. (P. L. 59; Pur. Dig., vol. 1, p. 609.)

**§ 1104. Bond of Register.**

Sec. 24. The said register shall give bond to the commonwealth in such penal sum as the orphans court of the county may direct, with two or more

sufficient sureties, for the faithful performance of the duties hereby imposed, and for the regular accounting and paying over of the amounts to be collected and received, and said bond, on its execution and approval by the said orphans court, to be forwarded to the auditor general. (P. L. 84; Pur. Dig., vol. 1, p. 609.)

**§ 1105. Collection by County Treasurer.**

Sec. 25. Until bond and security be given, as required by the preceding section, the said collateral inheritance tax shall be received and collected by the county treasurer as heretofore; and in such cases, all the provisions of this act relating to collection and payment by registers shall apply to the county treasurer. (P. L. 84; Pur. Dig., vol. 1, p. 609.)

**§ 1106. Returns and Payment by Register to State Treasurer.**

Sec. 26. It shall be the duty of the register of will of each county to make returns and payment to the state treasurer of all the collateral inheritance taxes he shall have received, stating for what estate paid, on the first Mondays of April, July, October and January in each year, and for all taxes collected by him, and not paid over within one month after his quarterly return of the same, he shall pay interest at the rate of twelve per centum per annum until paid. (P. L. 84; Pur. Dig., vol. 1, p. 609.)

**§ 1107. Lien of Tax.**

Sec. 27. The lien of the collateral inheritance tax shall continue until the said tax is settled and satisfied; provided, that the said lien shall be limited to the property chargeable therewith; and provided further, that all collateral inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to have been paid, and cease to be a lien as against any purchasers of real estate; and provided further, that all taxes due and legally demandable at the date of the passage of this act, the collection of which would be barred by the provisions hereof, shall not be barred, if suit shall be brought therefor within one year from the date of the passage of this act. (P. L. 84; Pur. Dig., vol. 1, p. 609.)

**§ 1108. Refund of Tax Erroneously Paid.**

Sec. 28. In all cases where any amount of collateral inheritance tax has heretofore been paid, or may hereafter be paid, erroneously, to the register of wills of the proper county, for the use of the commonwealth, it shall be lawful for the state treasurer, on satisfactory proof rendered to him by said register of wills of such erroneous payment, to refund and pay over to the executor, administrator, person or persons who may have heretofore paid or may hereafter pay any of such tax in error, the amount of such tax thus erroneously paid. (P. L. 59; Pur. Dig., vol. 1, p. 610.)

**§ 1109. Application for Repayment of Tax.**

Sec. 29. Provided, that all such applications for the repayment of such aforesaid tax, erroneously paid in the treasury, shall be made within two years from the date of said payment, except when the estate, upon which such tax

shall have been so erroneously paid, shall have consisted in whole or in part of a partnership, or other interest of uncertain value, or shall have been involved in litigation, by reason whereof there shall have been an over-valuation of that portion of the estate on which the tax has been assessed and paid, which over-valuation could not have been ascertained within said period of two years; then, and in such case, the application for repayment may be made to the state treasurer within one year from the termination of such litigation, or ascertainment of such over-valuation, or if that period has already expired at the time of the passage of this act, then within six months after the passage of this act, notwithstanding any limitation contained in any previous act of assembly. (P. L. 59; Pur. Dig., vol. 1, p. 610.)

**§ 1110. Refund of Tax When Estate was not Subject Thereto.**

Sec. 30. In all cases where a collateral inheritance tax has heretofore been paid, or may hereafter be paid, to the register of wills of the proper county, for the use of the commonwealth, and it shall afterward be made to appear in the proper courts that the estate is not subject to a collateral inheritance tax, on account of the lineal heirs being subsequently discovered, it shall be lawful for the state treasurer to refund and pay over to the executor, administrator, or person or persons who may have heretofore paid, or may hereafter pay, such collateral inheritance tax erroneously, the amount of such tax paid into the treasury. (P. L. 20; Pur. Dig., vol. 1, p. 610.)

**§ 1111. Bequest for Burial Lot.**

Sec. 31. Hereafter all bequests and devises in trust, for the purpose of applying the entire interest or income thereof to the care and preservation of the family burial lot or lots of the donor, in good order and repair perpetually, shall be exempt from liability for collateral inheritance tax. (P. L. 12; Pur. Dig., vol. 1, p. 610.)

**§ 1112. Time When Statute Takes Effect.**

Sec. 32. This act shall take effect on and after the first day of January, one thousand nine hundred and four, and shall not apply to any bequest or devise, as aforesaid, made prior to that time. (P. L. 12; Pur. Dig., vol. 1, p. 610.)

## CHAPTER LI.

### SOUTH DAKOTA STATUTE.

*(Laws of 1905, pp. 54-60.)*

- § 1113. Transfers Subject to Tax—Rates of Taxation—Market Value.
- § 1114. Estates for Years or for Life and Remainders.
- § 1115. Time for Payment of Tax.
- § 1116. Collection of Tax by Executor.
- § 1117. Sale of Property to Pay Tax.
- § 1118. Payment to State Treasurer—Receipts and Vouchers.
- § 1119. Notice to County Treasurer of Taxable Transfers.
- § 1120. Refund in Case of Debts Proved After Distribution.
- § 1121. Transfer of Stock or Loans by Foreign Executor.
- § 1122. Refund in Case of Erroneous Payment.
- § 1123. Appraisers and Appraisement.
- § 1124. Appraiser Taking More Than Regular Fee—Penalty.
- § 1125. Jurisdiction of County Court.
- § 1126. Citation to Delinquent Taxpayer.
- § 1127. Notice to State's Attorney of Unpaid Tax.
- § 1128. Statement of County Treasurer of Unpaid Taxes.
- § 1129. Books and Records to be Kept by Clerk of Court.
- § 1130. Receipts for Taxes Paid.
- § 1131. Lien of Tax.
- § 1132. Expenses Incurred in Enforcing Tax.
- § 1133. Payment to State Treasurer.

#### § 1113. Transfers Subject to Tax—Rates of Taxation—Market Value.

Sec. 1. That all property, real, personal and mixed, which shall pass by will or by the intestate laws of this state, or according to the provision of any statute in this state, from any person who may die seised or possessed of the same while a resident of this state, or if decedent was not a resident of this state at the time of his death, which property, or any part thereof, shall be within this state, or any interest therein or income therefrom which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor, or bargainor or giver, or intended to take effect in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason whereof any person or any body politic or corporate shall become beneficially entitled, in possession or expectancy, to any property or income thereof, shall be and is subject to a tax at the rate hereinafter specified, to be paid to the treasurer of the proper county for the use of the state, and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed.

When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother,

sister, wife or widow of the son, or husband of the daughter, or any child or children adopted as such in conformity with the laws of the state of South Dakota, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock; in every such case the rate of tax shall be one dollar on every one hundred dollars of the clear market value of such property received by each person, and at and after the same rate for every less amount. Estates of the clear market value of twenty thousand dollars or less transferred to the widow of the deceased, and five thousand dollars to each of the other persons above mentioned, shall be exempt.

When the beneficial interest to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece, nephew or any lineal descendant of the same, in every such case, the rate of such tax shall be two dollars on every hundred dollars of the clear market value of such property received by each person. Estates of the clear market value of five hundred dollars transferred to each of the persons last above mentioned shall be exempt.

In all other cases the rate shall be as follows: On each and every one hundred dollars of the clear market value of all property and at the same rate for any less amount on all estates of ten thousand dollars and less, four dollars; on all estates of over ten thousand dollars, and not exceeding twenty thousand dollars, six dollars; on all estates over twenty thousand dollars and not exceeding fifty thousand dollars, eight dollars; and on all estates over fifty thousand dollars, ten dollars. Estates of the clear market value of one hundred dollars, transferred to each of the parties mentioned in the last named class, shall be exempt.

The taxes so imposed by this act shall be upon the clear market value of such property at the rates above prescribed for each class and only upon the excess above the exemption herein provided. (Laws 1905, p. 54.)

#### § 1114. Estates for Years or for Life and Remainders.

Sec. 2. When any person shall bequeath or devise any property or interest therein, or income therefrom to mother, father, husband, wife, brother, sister, the widow of a son or a lineal descendant during life or for a term of years, or the remainder to the collateral heir of the decedent or to a stranger in blood or body corporate at their decease, or on the expiration of such term the said life estate or estate for a term of years shall not be subject to any tax, and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate or term of years the tax prescribed by this act on the remainder shall be immediately due and payable to the treasurer of the proper county, and together with the interest thereon shall be and remain a lien on said property until paid. Provided, that the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case said person or persons or body politic or corporate shall execute a bond to the state of South Dakota in a penalty three times greater than the amount of said



tax, with such surety as the judge of the county court of the proper county may approve, conditioned for the payment of said tax and interest thereon at such time or period as they or their representatives may come into the actual possession or enjoyment of said property; said bond shall be filed in the office of the clerk of the county court of the proper county. Provided, further, that such person shall make a full, verified return of such property and file the same in the office of the clerk of the county court of the proper county within one year from the death of the decedent and within that period enter into such security, and renew the same every five years. (Laws 1905, p. 55.)

**§ 1115. Time for Payment of Tax.**

Sec. 3. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and interest at the rate of six per cent per annum shall be charged and collected thereon for such times as said tax is not paid. Provided, that if said tax is paid within twelve months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per cent shall be allowed and deducted from said tax, and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent they shall be required to give a bond in the form and to the effect prescribed in section two of this act for the payment of said tax, together with interest. (Laws 1905, p. 56.)

**§ 1116. Collection of Tax by Executor.**

Sec. 4. Any administrator, executor or trustee having in charge or trust any legacies or property for distribution subject to the said tax shall deduct the tax therefrom, or if the legacy or property be not money he shall collect a tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon, and whenever any such legacy shall be charged upon or payable out of real estate the heir or devisee before paying the same shall deduct said tax therefrom and pay the same to the executor, administrator or trustee, and the same shall remain a charge on said real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the payment of such legacy might be enforced; if, however, such legacy be given in money to any person for a limited period he shall retain the tax upon the whole amount, but if it be not in money he shall make application to the court having jurisdiction of his accounts to make an apportionment if the case requires it, of the sum to be paid into his hands by said legatees and for such further order relative thereto as the case may require. (Laws 1905, p. 56.)

**§ 1117. Sale of Property to Pay Tax.**

Sec. 5. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay

said tax in the same manner as they may be enabled by law to do for the payment of debts of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed. (Laws 1905, p. 56.)

**§ 1118. Payment to State Treasurer—Receipts and Vouchers.**

Sec. 6. Every sum of money retained by any executor, administrator or trustee or paid into his hands for any tax on any property shall be paid by him within thirty days thereafter to the treasurer of the proper county, and said treasurer shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of such payment, one of which receipts he shall immediately send to the treasurer of state, whose duty it shall be to charge the treasurer so receiving said tax with the amount thereof, and said treasurer of state shall seal said receipt with the seal of his office and countersign the same and return it to said executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts, but said executor, administrator or trustee shall not be entitled to credit in his accounts or be discharged from liability for such tax unless he shall produce a receipt so sealed and countersigned by the treasurer of state, or a copy thereof, duly certified by such treasurer. (Laws 1905, p. 56.)

**§ 1119. Notice to County Treasurer of Taxable Transfers.**

Sec. 7. Whenever any of the real estate of which any decedent may die seised shall pass to any body politic, corporate or to any person or persons, or in trust for them, or some of them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof in writing to the treasurer of the county where said real estate is situate within six months after undertaking the execution of their respective duties, or if the fact be not known to them within that period, then within one month after the same shall come to their knowledge. (Laws 1905, p. 57.)

**§ 1120. Refund in Case of Debts Proved After Distribution.**

Sec. 8. Whenever debts shall be proven against the estate of the decedent after the payment of legacies or distribution of property, from which said tax has been deducted, or upon which it has been paid and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee if said tax has not been paid to the county treasurer or to the treasurer of the state, and by them if it has been so paid. (Laws 1905, p. 57.)

**§ 1121. Transfer of Stock or Loans by Foreign Executor.**

Sec. 9. Whenever any foreign executor or administrator shall assign or transfer any stock or loans in this state standing in the name of a decedent, or any trustees for a decedent, which shall be liable to said tax, said tax shall be paid to the treasurer of the proper county on the transfer thereof, otherwise the party making or permitting such transfer shall become liable to pay such tax. (Laws 1905, p. 57.)

**§ 1122. Refund in Case of Erroneous Payment.**

Sec. 10. When any amount of said tax shall have been paid erroneously to the treasurer of said state, it shall be lawful for him, on satisfactory proof rendered to him by the county treasurer of said erroneous payment, to refund and pay to the executor, administrator or person or persons who have paid such tax in error the amount of such tax so paid. Provided, that all such applications for the repayment of such tax shall be made within two years from the date of said payment. (Laws 1905, p. 57.)

**§ 1123. Appraisers and Appraisalment.**

Sec. 11. In order to fix the value of property of persons whose estates shall be subject to the payment of such tax, the county judge, on application of any interested party or officer, or upon his own motion, shall appoint some competent person as appraiser, as often as and whenever occasion may require, whose duty shall be forthwith to give such notice by mail to all persons known to have or claim an interest in said property, and to such persons as the county judge may by order direct, of the time and place at which he will appraise such property, and at such time and place to appraise the same at a fair market value, and for that purpose the appraiser is authorized, by leave of the county judge, to use subpoena for and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make a report thereof and of such value in writing, together with depositions of the witnesses examined and such other facts in relation thereto and of such matters as said judge may by order require to be filed in the office of the clerk of the county court, and from this report the said county judge shall forthwith assess and fix the then cash value of all estates, annuities and life estates or term of years growing out of said estate, and the tax to which the same is liable, and shall immediately cause notice by mail to be given to all parties known to be interested therein. Any person or persons dissatisfied with the appraisalment or assessment may appeal therefrom, as provided for appeals from the county court, within sixty days after the making and filing of such appraisalment or assessment, upon giving approved security for the payment of all costs, together with whatever taxes shall be ultimately adjudged. The said appraiser shall be paid by the county treasurer out of any funds he may have in his hands, upon the certificate of the county judge, at the rate of three dollars for every day actually and necessarily employed in making said appraisalment, with his actual and necessary traveling expenses as allowed and fixed by the judge of the county court. (Laws 1905, p. 57.)

**§ 1124. Appraiser Taking More Than Regular Fee—Penalty.**

Sec. 12. Any appraiser appointed by virtue of this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction shall be fined not less than two hundred and fifty dollars or more than five hundred dollars and

imprisoned not exceeding ninety days, and in addition thereto he shall be dismissed from such service. (Laws 1905, p. 58.)

**§ 1125. Jurisdiction of County Court.**

Sec. 13. The county court in the county in which the real property is situate of a decedent who was not a resident of the state, or of the county in which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act. (Laws 1905, p. 58.)

**§ 1126. Citation to Delinquent Taxpayer.**

Sec. 14. If it shall appear that any tax accruing under this act has not been paid according to law, a citation shall be issued, citing the person interested in the property liable to the tax to appear before the court on a day certain, not more than three months after the date of such citation, and show cause why such tax should not be paid. The process, practice and pleading and the hearing and determination thereof and the judgment in said court in such cases shall conform to the practice in other probate cases, and the fees and costs in such cases shall be the same as in probate cases in the county courts in this state. (Laws 1905, p. 58.)

**§ 1127. Notice to State's Attorney of Unpaid Tax.**

Sec. 15. Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal of the person interested in the property liable to said tax to pay the same, he shall notify the state's attorney of the proper county, in writing, of failure to pay such tax, and the state's attorney so notified, if he have probable cause to believe a tax is due and unpaid, shall prosecute the proceedings in the proper court as provided in section fourteen of this act for the enforcement and collection of such tax, and in such case said court shall allow as costs in said case, to be paid as said tax is paid, such fees to said attorney as he may deem reasonable. (Laws 1905, p. 59.)

**§ 1128. Statement of County Treasurer of Unpaid Taxes.**

Sec. 16. The judge and clerk of the county court of each county shall, every three months, make a statement in writing to the county treasurer of his county as to the property from which or the party from whom he has reason to believe a tax under this act is due and unpaid. (Laws 1905, p. 59.)

**§ 1129. Books and Records to be Kept by Clerk of Court.**

Sec. 17. The clerk of the county court of each county shall procure a book, in which he shall enter the returns made by appraisers, the cash values of annuities, life estates and terms of years and other property as fixed by the county court, together with the tax assessed thereon and the amount of any receipts for payments thereon filed with him, which book shall be a public record. (Laws 1905, p. 59.)

**§ 1130. Receipts for Taxes Paid.**

Sec. 18. Any person or body politic or corporate shall, upon the payment of the sum of fifty cents, be entitled to a receipt from the county treasurer, or a copy of the receipt, at his option, that may have been given by said treasurer for the payment of any tax under this act, which receipt shall designate on what real property, if any, of which deceased may have died seised, said tax has been paid, and by whom paid, and whether or not it is in full of said tax, and said receipt may be recorded in the office of the clerk of the county court of the county in which the property may be situate in the book provided by section seventeen. (Laws 1905, p. 59.)

**§ 1131. Lien of Tax.**

Sec. 19. The lien of the collateral inheritance tax shall continue until the said tax is settled and satisfied. Provided, that said lien shall be limited to the property chargeable therewith. And, provided further, that all inheritance taxes shall be sued for within six years after they are due and legally demandable, otherwise they shall be presumed to be paid and cease to be a lien as against purchasers of said real estate only. (Laws 1905, p. 59.)

**§ 1132. Expenses Incurred in Enforcing Tax.**

Sec. 20. Whenever the county judge of any county shall certify that there was probable cause for issuing a summons, and taking the proceedings specified in sections fourteen and fifteen of this act, the state treasurer shall pay or allow to the treasurer of any county all expenses incurred for service of summons and his other lawful disbursements that have not yet been paid. (Laws 1905, p. 60.)

**§ 1133. Payment to State Treasurer.**

Sec. 21. The treasurer of each county shall collect and pay the state treasurer all taxes that may be due and payable under this act, who shall give him a receipt therefor, of which collection and payment he shall make a report under oath to the county auditor on the first Monday in March and September of each year, stating for what estate paid, and in such form and containing such particulars as the county auditor may prescribe, and for all said taxes collected by him and not paid to the state treasurer by the first day of October and April of each year, he shall pay interest at the rate of six per cent per annum. Approved March 6, 1905. (Laws 1905, p. 60.)

## CHAPTER LII.

## TENNESSEE STATUTE.

(Acts of 1893, co. 89, 174; Shannon's Code (1906), pp. 282-289; Shannon's Supp. Code (1897-1903), pp. 107, 108; Acts of 1909, p. 1761.)

- § 1134. Transfers Subject to Tax—Rates—Exemptions.
  - § 1135. Bequest to Executor in Lieu of Compensation.
  - § 1136. Estate for Years or for Life and Remainders—Time of Payment.
  - § 1137. Estate for Years or for Life and Remainders—Valuation.
  - § 1138. Lien of Tax—Report of Personal Property and Security for Tax.
  - § 1139. Interest and Discount.
  - § 1140. Collection of Tax by Executor.
  - § 1141. Legacy for Limited Period or upon Contingency.
  - § 1142. Legacy Charged upon Real Estate.
  - § 1143. Information of Transfers to Clerk of County Court.
  - § 1144. Payment to Clerk of County Court—Receipts and Vouchers.
  - § 1145. Transfer of Stock or Loans by Foreign Executor.
  - § 1146. Refund of Tax in Case of Debts Proved After Distribution.
  - § 1147. Appraisers and Appraisement.
  - § 1148. Appraiser Receiving More Than Regular Fees—Penalty.
  - § 1149. Records to be Kept by Clerk of Court.
  - § 1150. Proceedings to Enforce Tax.
  - § 1151. Sale of Property to Pay Tax.
  - § 1152. Time for Bringing Suit to Enforce Tax.
  - § 1153. Trial and Appeal—Attorney Fees.
  - § 1154. Proceedings Where Clerk Discovers Unpaid Tax.
  - § 1155. Suit by Clerk to Enforce Tax.
  - § 1156. Jurisdiction of County Courts—Appeals.
  - § 1157. Fees and Costs in County and Circuit Courts.
  - § 1158. Suits by Clerk—Fees—Attorneys—Parties—Costs.
  - § 1159. Bond of Clerk of Court.
  - § 1160. Payment of Tax to State Treasurer.
  - § 1161. Lien of Tax.
  - § 1162. Attorney General to Represent Government.
  - § 1163. Bond of Executors.
  - § 1164. Duty of Chancery Court to See Tax Paid—Receipts and Vouchers.
  - § 1165. Appraisers—Oath and Compensation.
  - § 1166. Definition of "County Court."
- § 1134. Transfers Subject to Tax—Rates—Exemptions.
- Sec. 724. All estates—real, personal and mixed—of every kind whatsoever, situated within this state, whether the person or persons dying seised thereof be domiciled within or out of this state, passing from any person who may die seised or possessed of such estates, either by will, or under the intestate laws of this state, or any part of such estate or estates,

or interest therein, transferred by deed, grant, bargain, gift, or sale, made in contemplation of death, or intended to take effect in possession or enjoyment after the death of the grantor or bargainor to any person or persons, or to bodies corporate or politic, in trust or otherwise, other than to or for the use of the father, mother, brother, sister, the wife or widow of a son, or husband of a daughter, or any child or children adopted as such in conformity with the laws of the state of Tennessee, husband, wife, children, and lineal descendants born in lawful wedlock of the person dying seised and possessed thereof, shall be subject to a duty or tax of five dollars, on every hundred dollars of the clear value of such estate or estates so passing, and at and after the same rate for any less amount, to be paid to the use of the state; and all owners of such estates and all executors and administrators and their sureties shall only be discharged from liability for the amount of such taxes or duties the settlement of which they may be charged with, by having paid the same over for the use of the state as hereinafter directed; but no estate which may be valued at a less sum than two hundred and fifty dollars shall be subject to this duty or tax. (Shan. Code (1906), p. 282.)

Inheritances not taxed under the present laws shall pay a tax as follows: All inheritances of five thousand dollars and over, but less than twenty thousand dollars a tax of one per centum of their value. All inheritances of twenty thousand dollars and over, a tax of one and one-fourth per centum of their value, to be collected by the county court clerk of each county.\* (Acts 1909, p. 1761.)

#### § 1135. Bequest to Executor in Lieu of Compensation.

Sec. 725. Where a testator names or appoints one or more executors, and makes a bequest or devise of property to them in lieu of their commissions or allowance, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies exceed what would be a fair compensation for their services, such excess shall be subject to the payment of the collateral inheritance tax or duty, the rate of compensation to be fixed by the proper officers or courts having jurisdiction in the case. (Shan. Code (1906), p. 283.)

#### § 1136. Estate for Years or for Life and Remainders—Time of Payment.

Sec. 726. In all cases where there shall be a devise, bequest, or descent of an estate, real or personal, to collateral relatives or strangers liable to the collateral inheritance and succession tax, to take effect in possession or to come into actual enjoyment after the expiration of one or more life estates, or a period of years, the tax on such estate shall not be payable, nor interest begin to run thereon, until the person or persons liable for

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\*This section is a repeal, by implication, of so much of the acts of 1893 as exempted from the payment of the collateral inheritance tax the parties already named, and placed on them a burden common to all others who took from deceased persons. This section of the act of 1909 comes as a supplement to that of 1893, without so describing itself, and simply widens the collateral inheritance tax system. The two acts are in *pari materia*: *Knox v. Emerson* (Tenn.), 131 S. W. 972.

the same shall come into actual possession of such estate by the termination of the estates for life or years. (Shan. Code (1906), p. 283.)

**§ 1137. Estate for Years or for Life and Remainders—Valuation.**

Sec. 727. The tax shall be assessed upon the value of the estate at the time the right of possession accrues to the owner as aforesaid; but he shall have the right to pay the tax at any time prior to his coming into possession; and in such cases the tax shall be assessed on the value of the estate at the time of the payment of the tax, after deducting the value of the life estate or estates for years. (Shan. Code (1906), p. 283.)

**§ 1138. Lien of Tax—Report of Personal Property and Security for Tax.**

Sec. 728. The tax on all real estate shall be and remain a lien on the real estate on which the same is chargeable until paid; and the owner of any personal estate subject to the tax provided by sections 724 to 756, inclusive, shall make a full report and return of the same to the clerk of the county court of the proper county within one year from the death of the decedent, and within that time enter into security for the payment of the tax to the satisfaction of such clerk; and in case of failure so to do, the tax shall be immediately payable and collectible. (Shan. Code (1906), p. 283.)

**§ 1139. Interest and Discount.**

Sec. 729. If the collateral inheritance tax shall be paid within three months after the death of the decedent, a discount of five per centum on the amount of the tax shall be made and allowed; and if said tax is not paid at the end of one year from the death of the decedent, at which time it shall be due, interest shall then be charged at the rate of six per centum per annum on such tax. (Shan. Code (1906), p. 284.)

**§ 1140. Collection of Tax by Executor.**

Sec. 730. The executor or administrator or other trustee paying any legacy or share in the distribution of any estate subject to the collateral inheritance tax, as provided by sections 724 to 756, inclusive, shall deduct therefrom at the rate of five dollars in every hundred dollars upon the whole legacy or sum paid; or, if not money, he shall demand payment of a sum, to be computed at the same rate, upon the appraised value thereof, for the use of the state; and no executor or administrator shall be compelled to pay or deliver any specific legacy or article to be distributed, subject to tax, except on the payment into his hands of a sum computed on its value, as aforesaid; and in case of neglect or refusal on the part of said legatee or distributee to pay the same, such specific legacy or article, or so much thereof as shall be necessary, shall be sold by such executor or administrator at public sale, for cash, after notice to such legatee or distributee, and after ten days' advertisement, as in case of ordinary administrator's sales, and the balance that may be left in the hands of the executor or administrator, after reserving the tax, shall be distributed to the legatee or distributee, as is or may be directed by law; and every sum



of money retained by any executor or administrator, or paid into his hands on account of any legacy or distributive share, for the use of the state, shall be paid by him without delay to the county court clerk of the county in which his accounts are being administered. (Shan. Code (1906), p. 284.)

**§ 1141. Legacy for Limited Period or upon Contingency.**

Sec. 731. If the legacy subject to the collateral inheritance tax be given to any person for life, or for a term of years, or for any other limited period, upon a condition or contingency, if the same be money, the tax thereon shall be retained upon the whole amount; but, if not money, application shall be made to the county court having jurisdiction of the accounts of the executors or administrators to make apportionment, if the case requires it, of the sum to be paid by such legatees, and for such further order relative thereto as equity shall require. Such application shall be made by the executor of such estate after at least five days' notice to the parties concerned. (Shan. Code (1906), p. 284.)

**§ 1142. Legacy Charged upon Real Estate.**

Sec. 732. Wherever a legacy subject to the tax or duty hereby provided, shall be charged upon or payable out of real estate, the heir or devisee, before paying the same, shall deduct therefrom at the rate aforesaid, and pay the amount so deducted to the executor, and the same shall remain a charge and lien upon such real estate until paid, and the payment thereof shall be enforced by decree of the county court in the same manner that liens on real estate are now enforced in the chancery courts of this state, and the clerk of the county court officially shall be the complainant in such suit. (Shan. Code (1906), p. 284.)

**§ 1143. Information of Transfers to Clerk of County Court.**

Sec. 733. Whenever any real estate of which any decedent may die seized shall be subject to the collateral inheritance tax, it shall be the duty of executors and administrators to give information thereof to the clerk of the county court where administration has been granted, within six months after they undertake the execution of their respective duties; or, if the fact be not known to them within that period, within one month after the same shall have come to their knowledge; and it shall be the duty of the owners of such estate, immediately upon the vesting of the estate, to give information thereof to such clerk of the court having jurisdiction of the granting of administration. (Shan. Code (1906), p. 284.)

**§ 1144. Payment to Clerk of County Court—Receipts and Vouchers.**

Sec. 734. It shall be the duty of any executor or administrator receiving or collecting collateral inheritance tax, to pay the same to the clerk of the county court granting the administration, and where his accounts should be administered, and to take duplicate receipts from such clerk for the same, one of which shall be forwarded forthwith to the controller of the treasury, whose duty it shall be to charge the clerk receiving the money with the amount, and countersign the receipt and return it to the executor or

administrator, whereupon it shall be a proper voucher in the settlement of the estate; but in no event shall an executor or administrator be entitled to a credit in the settlement of his accounts with the county court clerk, or in the chancery court, if his accounts be there settled, unless the receipt is so countersigned by the controller. (Shan. Code (1906), p. 285.)

**§ 1145. Transfer of Stock or Loans by Foreign Executor.**

Sec. 735. Whenever any foreign executor or administrator or trustee shall assign or transfer any stocks or loans in this state standing in the name of the decedent, or in trust for a decedent, which shall be liable for the collateral inheritance tax, such tax shall be paid, on the transfer thereof, to the clerk of the county court where such transfer is made; otherwise the corporation or person permitting such transfer shall become liable to pay such tax. (Shan. Code (1906), p. 285.)

**§ 1146. Refund of Tax in Case of Debts Proved After Distribution.**

Sec. 736. Whenever debts shall be proven against the estate of a decedent after distribution of shares or legacies from which the collateral inheritance tax has been deducted, in compliance with sections 724 to 756, inclusive, and the legatee or distributee is required to refund any portion of a legacy or share, a corresponding portion of said tax shall be repaid to him by the executor or administrator if the said tax has not been paid to the clerk; and, if it has been so paid to the clerk, then it shall be repaid out of the state treasury upon the controller's warrant, to be drawn by him in favor of the person entitled thereto, upon the county clerk certifying, under his seal of office, that the same is justly due on account of the provisions of this section. (Shan. Code (1906), p. 285.)

**§ 1147. Appraisers and Appraisement.**

Sec. 737. It shall be the duty of the clerk of the county court in which letters testamentary or of administration are granted, to appoint an appraiser as often as and whenever occasion may require, to fix the valuation of estates which are or shall be subject to collateral inheritance tax; and it shall be the duty of such appraiser to make a fair and conscionable appraisement of such estates; and it shall further be the duty of such appraiser to assess and fix the cash value of all annuities and life estate growing out of said estates, upon which annuities and life estates the collateral inheritance tax shall be immediately payable, out of the estate, at the rate of such valuation, but shall bear no interest till the lapse of twelve months from the death of the decedent; and, in fixing the value of such annuities and life estate, the computation shall be made by the Carlyle Life Tables, whenever the use of life tables is necessary or applicable. Said appraisements shall be reduced to writing, in the nature of a report, and shall be, by the appraiser, filed with the clerk appointing him; and any interested person not satisfied with said appraisement shall have the right, at any time within thirty days after such appraisement is filed with the clerk, to file exceptions thereto, in writing, on giving security to pay all costs, together with whatever tax shall be fixed by the county court,

and thereupon, to have the county court to hear said exceptions; and, upon such exceptions being filed, the county court shall have jurisdiction to determine all questions of valuation, and of the liability of the appraised estate for such tax, subject to the right of appeal to the circuit court (or court of like jurisdiction) as in other cases. If an appeal should be prosecuted to the circuit court, such cause shall there be heard de novo. (Shan. Code (1906), p. 285.)

**§ 1148. Appraiser Receiving More Than Regular Fees—Penalty.**

Sec. 738. It shall be a misdemeanor in any appraiser appointed by the county court clerk to make any appraisement in behalf of the state, to take any fee or reward from any executor, administrator, legatee, next of kin, or heir of any decedent; and, for any such offense, the clerk shall dismiss him from such service, and, upon conviction, he shall be fined not exceeding five hundred dollars and imprisoned in the county jail not exceeding one year (one or both), and the court shall have the power to assess the imprisonment, if the jury does not do so, as well as a fine, within the limit of the power of the court. (Shan. Code (1906), p. 286.)

**§ 1149. Records to be Kept by Clerk of Court.**

Sec. 739. It shall be the duty of the county court clerks to enter in a book to be provided at the expense of the state, to be kept for that purpose, and which shall be a public record, the returns made by all appraisers under sections 724 to 756, inclusive, opening an account in favor of the state against the decedent's estate, and the county court clerk may give certificate of payment of such tax from said record; and it shall be the duty of said clerk to transmit to the controller, on the first day of each month, a statement of all reports or returns made by appraisers during the preceding month, which statement shall be entered by the controller in a book to be kept by him for that purpose. (Shan. Code (1906), p. 286.)

**§ 1150. Proceedings to Enforce Tax.**

Sec. 740. Whenever any such tax on real estate shall have remained due and unpaid for one year, it shall be the duty of the county clerk, in his official name as clerk, to apply to the county court, by bill or petition, to enforce the payment of the same; whereupon, after process is duly served or notice duly given to the owner of the real estate charged with the tax, and to such other persons as may be interested, after the manner of the practice of the chancery courts, the county court shall proceed, according to equity, to make such decrees and orders for the enforcement of the lien and the payment of said tax out of such real estate as shall be just and proper, the county court being hereby invested with jurisdiction for said purposes; and any sales of real estate made hereunder shall be made on a credit of not less than six nor more than twenty-four months, barring the right of redemption as in chancery sales. (Shan. Code (1906), p. 286.)

**§ 1151. Sale of Property to Pay Tax.**

Sec. 741. If no one bids an amount at such sales sufficient to cover the taxes due and costs, the clerk of the county court, by himself or agent,

shall bid the land in for the state, bidding an amount deemed sufficient to cover said taxes due and costs; and, in this event, upon confirmation of the report of sale, a writ of possession may be issued to place the state or its agents in possession of such real estate, and so as to any other purchaser. If the state so become the purchaser of real estate, the cost of the cause shall be paid by the state, the controller drawing his warrant therefor in favor of such clerk upon the clerk certifying such cost bill to the controller. (Shan. Code (1906), p. 286.)

**§ 1152. Time for Bringing Suit to Enforce Tax.**

Sec. 742. If said clerk knows any good and sufficient reason why the payment of such tax has been delayed, he shall not be compelled to file such bill immediately upon said tax becoming due, but may, in his discretion, postpone the bringing of such suit to such time as he deems proper, within the limits of sections 724 to 756, inclusive. (Shan. Code (1906), p. 286.)

**§ 1153. Trial and Appeal—Attorney Fees.**

Sec. 743. If the court adjudges such tax to be due, and a charge upon the real estate, it shall tax up, as a part of the costs, a reasonable attorney's fee for the clerk's solicitor or attorney in the case, to be collected out of the land as the said tax and other costs. Appeals from final decrees in suits under this section shall lie to the circuit court, where an additional attorney's fee for services in that court shall be taxed up as costs (if the said tax be found due and a lien on the land) in favor of the attorney general of the circuit, who shall attend to such suits in the circuit court, such fee to be fixed by the court. In the trial of suits under this section in the county court, the proof may be heard orally or by deposition; but, on appeal, the cause shall be heard on the record brought up. (Shan. Code (1906), p. 287.)

**§ 1154. Proceedings Where Clerk Discovers Unpaid Tax.**

Sec. 744. If the clerk of the county court shall discover that any collateral inheritance tax has not been paid over according to law, he shall cause notice to be served upon the executors, administrators, legatees, or distributees, as the case may be, of the decedent, whose estate is subject to the tax, notifying them to appear before the county court on a certain day, which need not be the first day of the term, and show cause why the said tax should not be paid; and, when personal service cannot be had, notice shall be given for four weeks, once a week, in a newspaper published or circulating in the county, and the matter shall be heard by said court, on written or oral testimony; and, if the tax should be found due and unpaid, the said delinquent shall pay the tax and cost, and the said court shall enter such judgment and orders to this end as may be needful to enforce the collection of the tax and costs. Such notice shall be served at least five days before the time set therein for appearance, and, if by publication, the last publication shall be at least five days before the time of appearance. (Shan. Code (1906), p. 287.)

**§ 1155. Suit by Clerk to Enforce Tax.**

Sec. 745. Instead of the remedy in the last section, the clerk may enforce the collection of such delinquent tax by bill filed in his name as clerk, in the county court, to be proceeded with after the manner of chancery suits, and if he so proceeds by bill, he may obtain writs of attachment against the property of the delinquents, if there be grounds for attachments as provided by law, or writs of injunction, if there be grounds for the same. (Shan. Code (1906), p. 287.)

**§ 1156. Jurisdiction of County Courts—Appeals.**

Sec. 746. The county courts are invested with full jurisdiction to hear and determine such suits as if a court of equity for this purpose. But in such cases the testimony before the county court may be either oral or in writing. From final judgments, decrees, or orders in the county courts in suits or proceedings provided by this and the last section, appeals shall lie to the circuit court, in which court the cause shall be heard de novo, if commenced by notice in the county court; but, if commenced by bill, it shall be heard only upon the record. If the delinquent be the appellant, he shall give bond upon appeal, not only for the costs, but also to pay the tax due, if he is cast in the suit. (Shan. Code (1906), p. 287.)

**§ 1157. Fees and Costs in County and Circuit Courts.**

Sec. 747. In said appeals, the attorney general of the circuit shall attend to the suits for the clerk or state in the circuit court, and his fee and that of the clerk's attorneys in the county court, if the delinquent (be) held liable, shall be taxed up as costs by the respective courts, substantially as provided in section 743. (Shan. Code (1906), p. 287.)

**§ 1158. Suits by Clerk—Fees—Attorneys—Parties—Costs.**

Sec. 748. The clerks of the county courts of the several counties of the state shall be the agents of the state for the collection of the collateral inheritance and succession tax, or duty provided for by sections 724 to 756, inclusive, and for their services rendered in collecting and paying over the same, they shall be allowed to retain five per centum on all such taxes paid over and accounted for; and it shall be the duty of said clerks, whenever necessary, to employ an attorney to aid them in collecting, by suits, the said collateral inheritance tax, the fees of such attorneys to be taxed up by the court as costs against the delinquent, if he shall be held liable, such fees to be reasonable. Any such suits are, on the one side, to run in the official name of the clerk, and may be reviewed in the name of his successor in office, but he is not required to give any bonds for costs in bringing suits, or on appeals; and, if suits are decided against him, judgment shall be given against the state for costs, and the state shall pay the same, unless the court should be of the opinion that the suit brought or the appeal prosecuted by the said clerk was malicious or frivolous, in which event, the court shall tax the cost against the clerk individually; and, when the costs, expenses, and attorneys' fees cannot be collected out of the delinquent, when adjudged against him, or when the costs are adjudged against the state, the

controller is authorized and empowered, in settlement of accounts of such clerks (clerk), to allow him to retain such costs and reasonable attorneys' fees incurred in the collection of such taxes. The fact that the clerk is a party to such suits shall not render him incompetent to issue writs, subpoenas, notices, etc., in such suits, and, for the same, he shall be entitled to receive the same fees as allowed by law for such services, and also the usual fees for making out transcripts on appeals. (Shan. Code (1906), p. 288.)

**§ 1159. Bond of Clerk of Court.**

Sec. 749. When any clerk of the county court is inducted into office, the bond required by law to be given by him to account for all revenues collected by him for the state shall cover and be liable for the taxes received and collected by him in virtue of sections 724 to 756, inclusive; and, if that bond be executed and approved, no other or special bond need be given by him to account for revenues collected under said sections. (Shan. Code (1906), p. 288.)

**§ 1160. Payment of Tax to State Treasurer.**

Sec. 750. It shall be the duty of the clerk of the county court to make return and payment to the treasurer of the state, in the usual method, of all the collateral inheritance taxes he shall have received for the previous quarter, stating for what estates paid, on the first day of April, July, October, and January in each year, and, for all such taxes collected by him and not paid over within one month after his quarterly returns of the same is or should be made, he shall pay interest, by way of penalty, at the rate of twelve per centum per annum until paid. (Shan. Code (1906), p. 288.)

**§ 1161. Lien of Tax.**

Sec. 751. The lien of the collateral inheritance tax shall continue until the tax is settled and satisfied, but the said lien shall be limited to the property chargeable therewith; and all collateral inheritance tax (taxes) shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to have been paid, and cease to be a lien as against any purchasers of real estate. (Shan. Code (1906), p. 288.)

**§ 1162. Attorney General to Represent Government.**

Sec. 752. In suits arising under sections 724 to 756, inclusive, which may be carried to the supreme court, the attorney general of the state shall represent the clerk of the county court and the state in that court. (Shan. Code (1906), p. 288.)

**§ 1163. Bond of Executors.**

Sec. 753. The bonds of all executors and administrators which are required to be given by law, shall be liable for the faithful discharge by them of all duties imposed upon them by sections 724 to 756, inclusive, including the faithful paying over by them of all collateral inheritance taxes that may come to their hands; and any trustee whose duties are

similar to those of an executor, or who has the dividing or disposing of an estate of a decedent, is included in said sections under the term executor. (Shan. Code (1906), p. 288.)

**§ 1164. Duty of Chancery Court to See Tax Paid—Receipts and Vouchers.**

Sec. 754. In all cases where an estate is being wound up or administered in a chancery court, it shall be the duty of that court to see that the collateral inheritance tax is paid to the clerk of the county court, if such estate be liable for such tax, and to see that such tax is paid or retained before a legacy or share of an estate is paid or turned over to the owner; and, if any such tax is received by the clerk and master, it shall be ordered paid by him to the county court clerk, and upon such payment being made by a clerk and master, he shall take duplicate receipts from the county court clerk, and transmit one of them to the controller, who shall countersign it and return it, and it shall only be a good voucher to the clerk and master upon its being so countersigned. (Shan. Code (1906), p. 289.)

**§ 1165. Appraisers—Oath and Compensation.**

Sec. 755. The appraiser provided for by sections 724 to 756, inclusive, shall be sworn by the county court clerk to faithfully and impartially perform his duty, and to make due returns, in writing, of his action in the premises, with a written statement appended of the length of time spent by him in appraising the particular property, and the necessary expense, by items, incurred by him traveling to and from the property, if there be such expense; and for his services the appraiser shall receive two dollars per day for the time necessarily spent in such service, and his actual traveling expenses in addition, to be paid him by said clerk out of any collateral inheritance tax coming to his hands, and for which the clerk shall receive credit. Said clerk shall have the right to audit any such cost bill of an appraiser, and to reduce the amount of the same, if satisfied it is incorrect, and it shall be his duty to do so. (Shan. Code (1906), p. 289.)

**§ 1166. Definition of "County Court."**

Sec. 756. The term "county court," used in sections 724 to 756, inclusive, shall be construed to apply to the county courts presided over and held by the chairman or county judge, and not to the quarterly county courts. (Shan. Code (1906), p. 289.)

## CHAPTER LIII.

## TEXAS STATUTE.

*(Acts of 1907, pp. 497-505; Supplement to Sayles' Texas Civil Statutes of 1908-10, pp. 387-392.)*

- § 1167. Transfers Subject to Tax—Rates of Taxation.
- § 1168. Estates for Years or for Life and Remainder.
- § 1169. Bequest to Executor in Lieu of Compensation.
- § 1170. Inventory to be Filed by Executor.
- § 1171. Proceedings When No Administration Applied for.
- § 1172. Appraisers and Appraisement.
- § 1173. Determination of Amount of Tax—Lien and Interest.
- § 1174. Collection of Tax by Executor—Sale of Property.
- § 1175. Legacy Charged upon Real Estate.
- § 1176. Payment to Collector of Taxes—Receipts.
- § 1177. Action to Recover Tax from Executor.
- § 1178. Payment to State Treasurer.
- § 1179. Deposits of Moneys as General Revenue Fund.
- § 1180. Refund in Case of Debts Proved After Distribution.
- § 1181. Account of Executor not Allowed Until Taxes Paid.
- § 1182. Proceedings Where No Administration Necessary.

**§ 1167. Transfers Subject to Tax—Rates of Taxation.**

Sec. 1. All property within the jurisdiction of this state, real or personal, corporeal or incorporeal, and any interest therein, whether belonging to inhabitants of this state or not, which shall pass, absolutely or in trust, by will, or by the laws of descent of this or any other state, or by deed, grant, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or donor, shall upon passing to or for the use of any person except the father, mother, husband, wife or direct lineal descendants of the testator, intestate, grantor or donor, or any public corporation or charitable, educational or religious organization within this state when such bequest, gift or devise is to be used for charitable, educational or religious purposes within this state, be subject to a tax for the benefit of the state, as follows:

(1) If passing to or for the use of a lineal ascendant or a brother or sister, or a lineal descendant of a brother or sister, the tax shall be two per cent on any value in excess of two thousand dollars, and not exceeding ten thousand dollars; two and one-half per cent of any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; three per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; three and one-half per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; four per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars; and five per cent on any value in excess of five hundred thousand dollars.



(2) If passing to or for the use of an uncle or aunt, or a lineal descendant of an uncle or aunt of the decedent, the tax shall be three per cent on any value in excess of one thousand dollars, and not exceeding ten thousand dollars; four per cent on any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; five per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; six per cent on any value in excess of fifty thousand dollars and not exceeding one hundred thousand dollars; seven per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars, and eight per cent on any value in excess of five hundred thousand dollars.

(3) If passing to or for the use of any other person, natural or artificial, the tax shall be four per cent of any value in excess of five hundred dollars, and not exceeding ten thousand dollars; five and one-half per cent on any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; seven per cent on any value in excess of twenty-five thousand dollars and not exceeding fifty thousand dollars; eight and one-half per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; ten per cent on any value in excess of one hundred thousand dollars and not exceeding five hundred thousand dollars, and twelve per cent on any value in excess of five hundred thousand dollars. (Supp. Sayles' Tex. Civ. Stats. 1908-10, p. 388.)

**§ 1168. Estates for Years or for Life and Remainder.**

Sec. 2. If the property passing as aforesaid shall be divided into two or more estates, as an estate for years or for life and a remainder, the tax shall be levied on each estate in interest separately according to the value of the same at the death of the decedent. The value of estates for years, estates for life, remainders and annuities shall be determined by the "Actuaries' Combined Experience Tables," at four per cent compound interest. (Supp. Sayles' Tex. Civ. Stats. 1908-10, p. 389.)

**§ 1169. Bequest to Executor in Lieu of Compensation.**

Sec. 3. If a testator bequeaths or devises to his executor or trustee, property in lieu of the latter's commission, the value of such property in excess of reasonable compensation, as determined by the county judge on his own motion, or on the application of any officer on behalf of the state, shall be subject to taxation under this act. (Supp. Sayles' Tex. Civ. Stats. 1908-10, p. 389.)

**§ 1170. Inventory to be Filed by Executor.**

Sec. 4. Every executor, administrator and trustees [trustees] of the estate of a decedent leaving property subject to taxation under this act, whether such property passes by will or by the laws of descent or otherwise, shall, within three months after his appointment, make and file an inventory thereof in the county court having jurisdiction of the estate of the decedent. Any executor, administrator or trustee refusing or neglecting to comply with the provisions of this section shall be liable to a penalty

not exceeding one thousand dollars to be recovered in an action brought in behalf of the state by the district or county attorney upon notice from the judges of the county court. (Supp. Sayles' Tex. Civ. Stats. 1908-10, p. 389.)

**§ 1171. Proceedings When No Administration Applied for.**

Sec. 5. If within three months after the death of a decedent leaving property subject to taxation under this act no application for letters testamentary or of administration shall be made, it shall be the duty of the county court to appoint an administrator. It shall be the duty of the county attorney to report to the judge of the county court all such estates, whether the property subject to taxation passes by will or by laws of descent or otherwise. For each decedent's estate thus reported the county attorney shall receive a compensation of ten per cent of the tax payable, but not to exceed twenty dollars in any one estate. Such payment shall be made by the collector of taxes, on the certificate of the county judge, out of the taxes paid him on property belonging to such estate. (Supp. Sayles' Tex. Civ. Stats. 1908-10, p. 389.)

**§ 1172. Appraisers and Appraisement.**

Sec. 6. Said tax shall be assessed upon the actual or market value of the property. The judge of the county court having jurisdiction of the estate of the decedent, shall, as often as and whenever occasion may require, appoint two competent disinterested persons as appraisers to fix the value of property subject to said tax. The appraisers, being first sworn, shall forthwith give notice to all persons known to have a claim or interest in the property to be appraised, including the executor, administrator or trustee, and the collector of taxes of the county, of the time and place when they will appraise the same. At such time and place they shall appraise such property at its actual or market value at the time of the death of the decedent, and shall thereupon make report thereof in writing to said county judge, who shall file such report. Each appraiser shall be paid, on the certificate of the county judge, two dollars for each day employed in such appraisal, together with his actual necessary expenses incurred therein, which payments shall be made by the collector of taxes out of any moneys in his hands received under this act; provided, however, that upon the agreement of the parties interested to dispense with the appointment of appraisers the county judge shall himself appraise the property and make and file a report thereof. If the same decedent shall leave property subject to this tax to more than one person, a separate appraisal and report shall be made for the property of each person. (Supp. Sayles' Tex. Civ. Stats. 1908-10, p. 390.)

**§ 1173. Determination of Amount of Tax—Lien and Interest.**

Sec. 7. Immediately upon the filing of the report of the appraisement, the county judge shall calculate and determine the amount of tax due on such property under this act, and shall in writing certify such amount to the collector of taxes, to the executor, administrator or trustee, and to

the person to whom or for whose use the property passes. Said tax shall be a lien upon such property from the death of the decedent until paid, and shall bear interest from such death until paid, unless payment shall be made within six months after such death, in which case no interest shall be charged. (Supp. Sayles' Tex. Civ. Stats. 1908-10, p. 390.)

**§ 1174. Collection of Tax by Executor—Sale of Property.**

Sec. 8. If such property be in the form of money, the executor, administrator or trustee shall deduct the amount of the tax therefrom before paying it to the party entitled thereto; if it be not in the form of money, he shall withhold the property until the payment by such party of the amount of the tax; in any case the executor, administrator or trustee shall be liable for the amount of the tax and shall have the right, in case of neglect or refusal after due notice of the party entitled to the property to pay such amount, to sell, at public sale, after due notice to such party, the property, or so much thereof as may be necessary. Out of the sum realized on such sale, the executor, administrator or trustee shall deduct the amount of the tax and the expenses of the sale, and shall pay the balance to the party entitled thereto. (Supp. Sayles' Tex. Civ. Stats. 1908-10, p. 390.)

**§ 1175. Legacy Charged upon Real Estate.**

Sec. 9. Whenever any legacy subject to said tax shall be charged upon or payable out of real estate, the heir or devisee, before paying the legacy, shall deduct the amount of the tax therefrom, and pay the amount so deducted to the executor, administrator or trustee; the amount of the tax shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor or trustee in the same manner as the payment of the legacy itself could be enforced. (Supp. Sayles' Tex. Civ. Stats. 1908-10, p. 391.)

**§ 1176. Payment to Collector of Taxes—Receipts.**

Sec. 10. All taxes received under this act by any executor, administrator or trustee, shall be paid by him within thirty days thereafter to the collector of taxes of the county whose county court has jurisdiction of the estate of the decedent. Upon such payment, the collector shall make duplicate receipts thereof; he shall deliver one to the party making payment, the other he shall send to the controller of public accounts, who shall charge the collector with the amount thereof, and shall countersign and affix his seal of office to such receipt and transmit same to the party making payment. (Supp. Sayles' Tex. Civ. Stats. 1908-10, p. 391.)

**§ 1177. Action to Recover Tax from Executor.**

Sec. 11. In case such tax shall not be paid to the collector of taxes within six months after the county judge has notified the amount thereof as hereinbefore provided, the collector shall commence an action to recover the amount of such tax against the executor, administrator or trustee, and the party to whom or for whose use the property has passed; provided,

that the county judge may by certificate to the collector extend the time of payment whenever the circumstances of the case require. (Supp. Sayles' Tex. Civ. Stats. 1908-10, p. 391.)

**§ 1178. Payment to State Treasurer.**

Sec. 12. The collector of taxes of each county shall, on or before the fifteenth day of each month, pay to the state treasurer all taxes received by him under this act before the first day of that month, deducting therefrom all lawful disbursements made by him under this act, and also his compensation at the rate of one per cent of all taxes collected under this act. (Supp. Sayles' Tex. Civ. Stats. 1908-10, p. 391.)

**§ 1179. Deposits of Moneys as General Revenue Fund.**

Sec. 13. The moneys received by the state treasurer under this act shall be deposited in the state treasury to the credit of the fund now there existing and known as the general revenue fund. (Supp. Sayles' Tex. Civ. Stats. 1908-10, p. 391.)

**§ 1180. Refund in Case of Debts Proved After Distribution.**

Sec. 14. Whenever any debts shall be proven against the estate of a decedent after the distribution of property on which the tax has been paid, and a refund is made by the distributee, a due proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee, if still in his hands, or by the collector of taxes if it has been paid to him. The collector shall pay such sums upon the order of the county judge out of any money in his possession under this act; and the controller of public accounts shall credit the collector with all sums so paid out by him. (Supp. Sayles' Tex. Civ. Stats. 1908-10, p. 391.)

**§ 1181. Account of Executor not Allowed Until Taxes Paid.**

Sec. 15. No final account of an executor, administrator or trustee shall be allowed by the county judge unless such account shows, and said judge finds, that all taxes imposed under this act on any property or interest passing through his hands as such have been paid; and the receipt of the collector of taxes for such taxes shall be the proper voucher for such payment. (Supp. Sayles' Tex. Civ. Stats. 1908-10, p. 392.)

**§ 1182. Proceedings Where No Administration Necessary.**

Sec. 16. If for any reason administration of the estate of a decedent leaving property subject to taxation under this act, shall not be necessary in this state, except in order to carry out the provisions of this act, it shall be in the discretion of the county judge upon the filing of a satisfactory inventory of the taxable property by the trustee or owner, to dispense with the appointment of an administrator. Upon the filing of such inventory, the appraisement and other proceedings required by this act shall be had as in other cases. (Supp. Sayles' Tex. Civ. Stats. 1908-10, p. 392.)

## CHAPTER LIV.

## UTAH STATUTE.

*(Laws of 1905, pp. 198-209.)*

- § 1183. Transfers Subject to Tax—Rates—Lien of Tax—Exemptions.
- § 1184. Deduction of Debts.
- § 1185. Appointment of Appraisers.
- § 1186. Appraiser Receiving Illegal Fees—Penalty.
- § 1187. Issuance of Commissions to Appraisers.
- § 1188. Notice and Filing of Appraisement.
- § 1189. Objections to Appraisement and Hearing Thereon.
- § 1190. Action in Pending Cases.
- § 1191. Time for Appraisement and Assessment—Sale of Property to Pay Tax.
- § 1192. Estates for Years or for Life and Remainders.
- § 1193. Bequests to Executors in Lieu of Compensation.
- § 1194. Legacies Charged upon Real Estate.
- § 1195. Collection of Tax by Executor.
- § 1196. Payment to State Treasurer—Interest.
- § 1197. Collection of Tax by Executor.
- § 1198. Account of Executor not Settled Until Tax Paid.
- § 1199. Jurisdiction of District Court.
- § 1200. Information to be Furnished by Executor to State Treasurer.
- § 1201. Inheritance Tax and Lien Book to be Kept by Clerk.
- § 1202. Report of Executor—Entry of Real Estate in Lien Book.
- § 1203. Extension of Time for Appraisement.
- § 1204. Entries in Tax and Lien Books—Index.
- § 1205. Record to be Kept by Clerk.
- § 1206. Duty of Clerk to Make Examinations and Investigations.
- § 1207. Duties of Court and District Attorney.
- § 1208. Costs of Proceedings.
- § 1209. Transfer or Delivery of Deposits or Assets—Notice.
- § 1210. Foreign Estates—Assessment of Tax.
- § 1211. Foreign Estates—Assessment and Payment of Tax.
- § 1212. Transfer of Corporate Stock by Foreign Executor.
- § 1213. Compromise by State Treasurer.
- § 1214. Application of Statute to Pending Estates.
- § 1215. Repeal of Prior Statutes.
- § 1216. Time When Statute Takes Effect.

§ 1183. Transfers Subject to Tax—Rates—Lien of Tax—Exemptions.

Sec. 1. All property within the jurisdiction of this state and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the statutes of inheritance of this or any other state, or by deed, grant, sale

or gift made or intended to take effect in possession or enjoyment after the death of the grantor or donor, to any person in trust or otherwise, shall be subject to a tax of five per centum of its market value above the sum of ten thousand dollars, after the payment of all debts, for the use of the state; and all administrators, executors and trustees, and any such grantee under conveyance, and such donee under a gift made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them respectively, except as herein otherwise provided, with lawful interest as hereinafter set forth until the same shall have been paid. The tax aforesaid shall be and remain a lien on such estate from the death of the decedent until paid. In determining the amount of tax to be paid under the provisions of this section, after the payment of all debts the sum of ten thousand dollars shall be deducted from the entire estate and the tax shall be computed and paid on the entire remainder; and the court shall determine the amount of tax to be paid by the several devisees, legatees, grantees or donees of the decedent. (Laws 1905, p. 198.)

#### § 1184. Deduction of Debts.

Sec. 2. The term "debts" as used in this chapter, shall include, in addition to debts owing by decedent at the time of his death, the local or state taxes due, from the estate prior to his death, a reasonable sum for funeral expenses, the court costs, the cost of appraisement made for the purpose of assessing the inheritance tax, the statutory fees of executors, administrators or trustees, and no other sum; but said debts shall not be deducted unless the same are approved and allowed, within fifteen months from the death of decedent, as established claims against the estate, unless otherwise ordered by the judge of the proper county. (Laws 1905, p. 198.)

#### § 1185. Appointment of Appraisers.

Sec. 3. In each county the court shall annually appoint three competent residents and freeholders of said county, to act as appraisers of all property within its jurisdiction, which is charged or sought to be charged with an inheritance tax. Said appraisers shall serve for one year, and until their successors are appointed and qualified. They shall each take an oath to faithfully and impartially perform the duties of the office, but shall not be required to give bond. They shall be subject to removal at any time at the discretion of the court, and the court, or judge thereof in vacation, may also in its discretion, either before or after the appointment of the regular appraisers, appoint other appraisers to act in any given case. Vacancies occurring otherwise than by expiration of term, shall be filled by the appointment of the court, or by a judge in vacation. (Laws 1905, p. 198.)

#### § 1186. Appraiser Receiving Illegal Fees—Penalty.

Sec. 4. Any appraiser appointed by this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor, and upon conviction

in any court having jurisdiction of misdemeanors, he shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars and imprisoned not exceeding ninety days, and in addition thereto the judge shall dismiss him from such service. (Laws 1905, p. 199.)

**§ 1187. Issuance of Commissions to Appraisers.**

Sec. 5. When an estate is opened in which there is property which may be subject to the inheritance tax, the clerk shall forthwith issue a commission to the appraisers, who shall fix a time and place for appraisement. (Laws 1905, p. 199.)

**§ 1188. Notice and Filing of Appraisement.**

Sec. 6. It shall be the duty of all appraisers appointed under the provisions of this act to forthwith give notice to the state treasurer and other persons known to be interested in the property to be appraised, of the time and place at which they will appraise such property, which time shall not be less than ten days from the date of such notice. The notice shall be served in the same manner as is prescribed for the commencement of civil actions, and if not practicable to serve the notice provided for by statute, they shall apply to the court or a judge in vacation for an order as to notice and upon service of such notice and the making of such appraisement, the said notice, return thereon and appraisement shall be filed with the clerk, and a copy of such appraisement shall be filed by the clerk with the state treasurer. (Laws 1905, p. 199.)

**§ 1189. Objections to Appraisement and Hearing Thereon.**

Sec. 7. The state treasurer or any person interested in the estate appraised, may, within twenty days thereafter, file objections to said appraisement, on the hearing of which as an action in equity, either party may produce evidence competent or material to the matters therein involved. If, upon such hearing, the court finds the amount at which the property is appraised is at its value on the market in the ordinary course of trade, and the appraisement was fairly and in good faith made, it shall approve such appraisement; but if it finds that the appraisement was made at a greater or less sum than the value of the property in the ordinary course of trade, or that the same was not fairly or in good faith made, it shall set aside the appraisement, appoint new appraisers, and so proceed until a fair and good appraisement of the property is made at its value in the market in the ordinary course of trade. The state treasurer, or anyone interested in the property appraised, may appeal to the supreme court from the order of the district court approving or setting aside any appraisement to which exceptions have been filed. Notice of appeal shall be served within thirty days from the date of the order appealed from, and the appeal shall be perfected in the time now provided for appeals in equitable actions. In case of appeal, the appellant, if he is not the state treasurer, shall give bond to be approved by the clerk of the court, to pay the tax, which bond shall provide that the said appellant and sureties shall pay the tax for which the property may be liable with cost of appeal. If upon the hearing of objec-

tions to the appraisement, the court finds that the property is not subject to the tax, the court shall upon expiration of time for appeal, when no appeal has been taken, order the clerk to enter upon the lien book a cancellation of any claim or lien for taxes. If at the end of twenty days from the filing of the appraisement with the clerk, no objections are filed, the appraisement shall stand approved. (Laws 1905, p. 199.)

**§ 1190. Action in Pending Cases.**

Sec. 8. In all cases where the property of an estate has been subject to or liable for the payment of the tax provided in this act, or where such property has heretofore been appraised and the tax not yet paid, and the notice required in this act was not given, it shall be the duty of the court, immediately upon the taking effect of this act, to enforce such tax, or to set aside any appraisement heretofore made, and order a reappraisement of the same to be made as in this act provided, anything in the law contrary notwithstanding. (Laws 1905, p. 200.)

**§ 1191. Time for Appraisement and Assessment—Sale of Property to Pay Tax.**

Sec. 9. All the property of the decedent subject to such tax shall, except as hereinafter provided, be appraised within thirty days next after the appointment of an executor, administrator or trustee, at its market value in the ordinary course of trade, and the tax thereon, calculated upon the appraised market value after deducting debts for which the estate is liable, shall be paid by the persons entitled to said estate within fifteen months from the death of the testator or intestate, unless a longer period is fixed by the court, and, in default thereof, the court shall order the same, or so much thereof as may be necessary to pay such tax, to be sold. (Laws 1905, p. 200.)

**§ 1192. Estates for Years or for Life and Remainders.**

Sec. 10. Whenever any real estate of a decedent shall be subject to such tax, and there be a life estate or interest for a term of years given to one party or parties, and the remainder to another party or parties, the court shall direct the interest of the life estate, or term of years, to be appraised at its market value in the ordinary course of trade, and, upon the approval of such appraisement by the court, the party entitled to such life estate, or term of years, shall, within sixty days thereafter, pay such tax, and in default thereof the court shall order such interest in said estate, or so much thereof as shall be necessary to pay such tax, to be sold. Upon the determination of such life estate, or term of years, the court shall, upon its own motion, or upon the application of the state treasurer, cause such estate to be appraised at its then market value in the ordinary course of trade, from which shall be deducted the value of any improvements thereon, or betterments thereto, if any, made by the remainderman during the time of the prior estate, to be ascertained and determined by the appraisers, and the tax on the remainder shall be paid by such remainderman within sixty days from the approval by the court of the appraisers. If such tax is not



paid within said time, the court shall then order said real estate, or so much thereof as shall be necessary to pay such tax, to be sold. Whenever any personal estate of a decedent shall be subject to such tax and there be a life estate or interest for a term of years given to one party or parties, and the remainder to another party or parties, the court shall inquire into and determine the market value in the ordinary course of trade, of the life estate or interest for the term of years and order and direct the amount of the tax thereon to be paid by the prior estate and that to be paid by the remainderman, each of whom shall pay his proportion of the tax within sixty days from such determination, unless a longer period is fixed by the court, and, in default thereof, the executor, administrator or trustee, shall pay the same out of said property and hold the same from distribution, and invest it at interest under the order of the court until said tax is paid, or until the interest on the same equals the amount of such tax, which shall thereupon be paid. (Laws 1905, p. 200.)

**§ 1193. Bequests to Executors in Lieu of Compensation.**

Sec. 11. Whenever a decedent appoints one or more executors or trustees and in lieu of his or their allowance or commission makes a bequest or devise of property to him or them, which would otherwise be liable to said tax, or appoints them as residuary legatees, and said bequests, devises or residuary legacies exceed what would be a reasonable compensation for his or their services, such excess shall be liable to such tax, and the court having jurisdiction of his or their accounts, upon its own motion or on application of the state treasurer, shall fix such compensation. (Laws 1905, p. 201.)

**§ 1194. Legacies Charged upon Real Estate.**

Sec. 12. Whenever any legacies subject to said tax are charged upon or payable out of any real estate, the heir or devisee, before paying the same shall deduct said tax therefrom and pay it to the executor, administrator, trustee or state treasurer, and the same shall remain a charge and be a lien upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator, trustee or state treasurer in his name of office, in the same manner as the payment of the legacy itself could be enforced. (Laws 1905, p. 201.)

**§ 1195. Collection of Tax by Executor.**

Sec. 13. Every executor, administrator or trustee having in charge or trust any property subject to said tax, and which is made payable by him, shall deduct the tax therefrom, or shall collect the tax thereon from the legatee or person entitled to said property, and he shall not deliver any specific legacy or property subject to said tax to any person until he has collected the tax thereon. (Laws 1905, p. 202.)

**§ 1196. Payment to State Treasurer—Interest.**

Sec. 14. All taxes imposed by this act shall be payable to the state treasurer, and those which are made payable by executors, administrators or trustees shall be paid within fifteen months from the death of the testator

or intestate, unless a longer period is fixed by the court, or a judge thereof in vacation. All taxes not paid within fifteen months from death of the testator or intestate, shall draw interest at the rate of eight per centum per annum until paid. (Laws 1905, p. 202.)

**§ 1197. Collection of Tax by Executor.**

Sec. 15. It is hereby made the duty of all executors, administrators or trustees charged with the management or settlement of any estate subject to the tax provided for in this act, to collect and pay to the state treasurer the amount of the tax due from any devisee, legatee, grantee or donee of the decedent, except in cases falling under the provisions of sections nine and ten hereof, in which cases the state treasurer shall collect the same. Applications may be made to the district court by such executor, administrator, trustee or state treasurer to sell the real estate subject to said tax in an equitable action, or, if made to the court having charge of the settlement of the estate, the proceedings shall conform as nearly as may be to those for the sale of real estate of decedent for the settlement of his debts. (Laws 1905, p. 202.)

**§ 1198. Account of Executor not Settled Until Tax Paid.**

Sec. 16. No final settlement of the account of any executor, administrator or trustee shall be accepted or allowed unless it shall show, and the court shall find, that all taxes imposed by the provisions of this act upon any property or interest therein belonging to the estate to be paid by such executors, administrators or trustees, and to be settled by said account, shall have been paid, and the receipt of the state treasurer for such tax shall be the proper voucher for such payment. (Laws 1905, p. 202.)

**§ 1199. Jurisdiction of District Court.**

Sec. 17. The district court having either principal or ancillary jurisdiction of the settlement of the estate of the decedent shall have jurisdiction to hear and determine all questions in relation to said tax that may arise affecting any devise, legacy or inheritance, or any grant or gift, under this act, subject to appeal as in other cases, and the state treasurer shall in his name of office represent the interests of the state in any proceedings. (Laws 1905, p. 202.)

**§ 1200. Information to be Furnished by Executor to State Treasurer.**

Sec. 18. Before issuing his receipt for the tax, the state treasurer may demand from executors, administrators or trustees, such information as may be necessary to verify the correctness of the amount of the tax and interest, and when demanded, they shall send such treasurer certified copies of such parts of their reports as he may demand, and upon the refusal of said parties to comply with the demand of the state treasurer, it is the duty of the clerk of the court to comply with such demand, and the expenses of making such copies and transcripts shall be charged against the estate, as are other costs in probate. (Laws 1905, p. 203.)

**§ 1201. Inheritance Tax and Lien Book to be Kept by Clerk.**

Sec. 19. The clerk of the district court in and for each county, where an inheritance tax is charged or sought to be charged, shall provide and keep a suitable book, substantially bound and suitably ruled, to be known as the inheritance tax and lien book, in which shall be kept a full and accurate record of all proceedings in cases where property is charged or sought to be charged with the payment of an inheritance tax under the laws of this state, to be printed and ruled so as to show upon one page:

- (1) The name, place of residence, and date of death of the decedent.
- (2) Whether the decedent died testate, or intestate, and if testate, the record and page where the will was probated and recorded.
- (3) The name and postoffice address of the executor, administrator, trustee, or grantee, with date of appointment or transfer.
- (4) The names, postoffice addresses and relationship, if known, of all the heirs, devisees and grantees.
- (5) The appraised valuation of the personal property.
- (6) The amount of inheritance tax due upon said personal property.
- (7) A record of payment with amount and date.
- (8) Date of filing objections and names of objectors.
- (9) Blank for index and reference to all proceedings, and for memorandum entries of the court or judge in relation thereto.

Upon the opposite page of such record shall be printed:

- (1) Real estate derived from ..... (naming decedent) which is subject to the lien prescribed by the statute for inheritance tax.
- (2) A full and accurate description of such real estate, by forty-acre or fractional tracts, or by lots, or other complete individual description.
- (3) The appraised valuation as reported by the appraisers, with a reference to the record of their report, as to each piece of such real estate.
- (4) The amount of inheritance tax due upon each such piece.
- (5) A record of payments, with dates and amounts.
- (6) Date of filing objections, and names of objectors.
- (7) Blank for index and reference and to all proceedings, and for memorandum entries of court or judge in relation thereto. (Laws 1905, p. 203.)

**§ 1202. Report of Executor—Entry of Real Estate in Lien Book.**

Sec. 20. Upon the appointment and qualification of each executor, administrator and testamentary trustee, the clerk issuing the letters shall at the same time deliver to him a blank form upon which he shall be required to make detailed report of the following facts:

- (1) Name and last residence of the decedent.
- (2) Date of death.
- (3) Whether or not he left a will.
- (4) Name and postoffice of executor, administrator or trustee.
- (5) Name and postoffice of surviving wife or husband, if any.
- (6) If testate, name and postoffice of each beneficiary under the will.
- (7) Relationship of each beneficiary to the testator.
- (8) If intestate, name and postoffice of each heir at law.
- (9) Relationship of each heir at law to the decedent.

(10) Inventory of all real estate of the decedent, giving amount and description of each tract.

Within ten days after his qualification, each executor, administrator and testamentary trustee shall make and return to the clerk, under oath, a full and detailed report as indicated in the preceding paragraph, any will to the contrary notwithstanding, and upon his failure to do so, the clerk shall forthwith report his delinquency to the district court if in session, or to a judge of said court if in vacation, for such order as may be necessary to enforce an observance of this section. If it appears from the inventory or report so filed, that the real estate, or any part of it, is subject to an inheritance tax, it shall be the duty of the executor or administrator to cause the lien of the same to be entered upon the lien book in the office of the clerk of the court in each county where each particular tract of said real estate is situated, and no conveyance of said real estate or interest therein, which is subject to such tax before or after entering of said lien, shall discharge the real estate so conveyed from the operation thereof, and no final settlement of the account of any executor, administrator or trustee shall be accepted or allowed unless a strict compliance with the provisions of this section has been had by such person. (Laws 1905, p. 204.)

**§ 1203. Extension of Time for Appraisement.**

Sec. 21. Whenever, by reason of the complicated nature of an estate, or by reason of the confused condition of the decedent's affairs, it is impracticable for the executor, administrator, or trustee or beneficiary of said estate to file with the clerk of the court a full, complete and itemized inventory of the personal assets belonging to the estate, within the time required by statute for filing inventories of the estate, the court may, upon the application of such representatives or parties in interest, extend the time for the making of the inheritance appraisement for a period not to exceed three months beyond the time fixed by law. (Laws 1905, p. 205.)

**§ 1204. Entries in Tax and Lien Books—Index.**

Sec. 22. The clerk shall from time to time enter upon the inheritance tax and lien book, the title of all estates subject to the inheritance tax, as shown by the inventories or lists of heirs filed in his office, or as reported to him by the district attorney or the state treasurer, and shall enter in said book as against each estate or title at the appropriate place, all such information relating to the situation and condition of the estate as he may be able to obtain from the papers filed in his office, or from the district attorney or the state treasurer, as may be necessary to collection and enforcement of the tax. He shall also immediately index all liens entered upon the inheritance tax and lien book in the book kept in his office for that purpose. (Laws 1905, p. 205.)

**§ 1205. Record to be Kept by Clerk.**

Sec. 23. In all cases entered upon the inheritance tax and lien book, the clerk shall make a complete record in the proper probate record, of all the proceedings, orders, reports, inventories, appraisements and all other matters and proceedings therein. (Laws 1905, p. 205.)

**§ 1206. Duty of Clerk to Make Examinations and Investigations.**

Sec. 24. It shall be the duty of each clerk of the district court to make examination from time to time of all reports filed with him by administrators, executors and trustees, pursuant to law; also to make examination of all foreign wills offered for probate or recorded within his county, as well as of the record of deeds and conveyances in the recorder's office of said county, and if from such examination, or from information or knowledge coming to him from any other source, he finds or believes that any property within his county, or within the jurisdiction of the district court of said county, has since May 14, 1901, passed by will or by the intestate laws of this or any other state, or by deed, grant, sale, or gift made or intended to take effect, in possession or in enjoyment after the death of the testator, donor or grantor, to any person within this state, he shall make report thereof in writing to the state treasurer, embodying in such report the name and residence of the decedent, date of death, name and address of administrator, executor or trustee; the description of any property liable to a tax and the county in which it is located, and name and relationship of all beneficiaries or heirs. Any citizen of the state having knowledge of property liable to such tax, against which no proceeding for enforcing collection thereof is pending, may report the same to [the] clerk, and it shall be the duty of such officer to investigate the case, and if he has reason to believe the information to be true, he shall forthwith institute such proceedings substantially as above indicated. (Laws 1905, p. 205.)

**§ 1207. Duties of Court and District Attorney.**

Sec. 25. On the first or second day of each regular term, the court shall require the clerk to present for its inspection, the inheritance tax and lien book hereinbefore provided for, together with all reports of administrators, executors and trustees which have been filed pursuant to this chapter since the last preceding term. The district attorney shall also attend and make report to the court concerning the progress of all cases pending for the collection of such taxes, together with any other facts, which, in his judgment, may aid the court in enforcing the general observance of the inheritance tax law. If from information obtained from the records or reports, or from any other source, the court has reason to believe that there is property within its jurisdiction liable to the payment of an inheritance tax, against which proceedings for collection are not already pending, it shall enter an order of record, directing the district attorney to institute such proceedings forthwith. Should any estate, or the name of any grantee or grantees be placed upon the book at the suggestion of the district attorney or the state treasurer in which the papers already on file in the clerk's office do not disclose that any inheritance tax is due or payable, the district attorney shall forthwith give to all parties in interest such notice as the court or judge may prescribe, requiring them to appear on a day to be fixed by the said court or judge, and show cause why the property should not be appraised and subjected to said tax. If upon hearing at the time so fixed, the court is satisfied that any property of the decedent, or any property devised, granted or donated by him, is subject to the tax, the same

proceedings shall be had as in other cases, so far as applicable. (Laws 1905, p. 206.)

**§ 1208. Costs of Proceedings.**

Sec. 26. In all cases where any property so passes as to be liable to taxation under the inheritance law, all costs of the proceedings had for determining the amount of such tax or for determining whether the property of the entire estate is sufficient in amount as to render that part passing to heirs subject to the tax, shall be chargeable to such estate, and to discharge the lien upon such property all costs, as well as the taxes must be paid. In all other cases the costs are to be paid as ordered by the court, and when a decision adverse to the state has been rendered, with an order that the state pay the costs, it is the duty of the clerk of the court in which such action was pending to certify the amount of such costs to the state treasurer who shall, if said costs be correctly certified, and the case has been finally terminated, present the claim to the state board of examiners, to audit, and; said claim being allowed by said board, the state auditor is directed to issue a warrant on the state treasurer in payment of such costs. (Laws 1905, p. 207.)

**§ 1209. Transfer or Delivery of Deposits or Assets—Notice.**

Sec. 27. No safe deposit company, bank or other institution, person or persons, holding securities or assets of the decedent shall deliver or transfer the same to the executor or administrator or legal representative of said decedent unless notice of the time and place of such intended transfer be served upon the state treasurer at least five days prior to the transfer thereof, or unless the tax for which such securities or assets are liable under this act, shall be first paid. It shall be lawful for and the duty of, the state treasurer to personally, or by any person by him duly authorized, to examine such securities or assets at the time of such delivery or transfer. Failure to serve such notice upon the state treasurer, or to allow such examination on the delivery of such securities or assets to such executor, administrator or legal representative before said tax is paid shall render such safe deposit company, trust company, bank or other institution, person or persons liable for the payment of the taxes due upon such securities or assets as provided in this act. (Laws 1905, p. 207.)

**§ 1210. Foreign Estates—Assessment of Tax.**

Sec. 28. Whenever any property belonging to a foreign estate, which estate, in whole or in part, is liable to pay an inheritance tax in this state, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state; in the event that the executor, administrator or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction, and with the state treasurer, duly certified statements exhibiting the true market value of the entire estate of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the

court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the said indebtedness of the decedent from the value of the property as the value of the property within this state bears to the value of the entire estate. (Laws 1905, p. 207.)

**§ 1211. Foreign Estates—Assessment and Payment of Tax.**

Sec. 29. Whenever any property, real or personal, within this state, belongs to a foreign estate, said foreign estate passes in part exempt from the inheritance tax, and in part subject to said inheritance tax, and it is within the authority or discretion of the foreign executor, administrator or trustee administering the estate to dispose of the property not specifically devised to direct heirs or devisees in the payment of the debts owing by the decedent at the time of his death, or in the satisfaction of legacies or devises or trusts given to direct and collateral legatees or devisees, or in payment of the distributive shares of any direct and collateral heirs, then the property within the jurisdiction of the state, belonging to such foreign estate, shall be subject to the inheritance tax imposed by this act, and the tax due thereon shall be assessed as provided in the next preceding section of this act, and with the same proviso respecting the deduction of the proportionate share of the indebtedness, as therein provided. (Laws 1905, p. 208.)

**§ 1212. Transfer of Corporate Stock by Foreign Executor.**

Sec. 30. If a foreign executor, administrator, or trustee shall assign or transfer any corporate stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to such tax, the tax shall be paid to the state treasurer on or before the transfer thereof; otherwise the corporation permitting its stock to be so transferred shall be liable to pay such tax and it is the duty of the state treasurer to enforce the payment thereof. (Laws 1905, p. 208.)

**§ 1213. Compromise by State Treasurer.**

Sec. 31. Whenever an estate charged, or sought to be charged, with the inheritance tax, is of such a nature, or is so disposed, that the liability of the estate is doubtful, or the value thereof cannot, with reasonable certainty, be ascertained under the provisions of law, the state treasurer may, with the approval of the attorney general, which approval shall set forth the reasons therefor, compromise with the beneficiaries or representatives of such estates, and compound the tax thereon; but said settlement must be approved by the district court or judge of the proper court, and after such approval, the payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate. (Laws 1905, p. 208.)

**§ 1214. Application of Statute to Pending Estates.**

Sec. 32. This act shall apply to all pending estates which are not closed, and the property subjected by this act to the said tax is liable to the provisions incorporated in this act. (Laws 1905, p. 208.)

**§ 1215. Repeal of Prior Statutes.**

Sec. 33. Chapter 62, Laws of Utah, 1901, and chapter 93, Laws of Utah, 1903, are hereby repealed. (Laws 1905, p. 209.)

**§ 1216. Time When Statute Takes Effect.**

Sec. 34. This act shall take effect upon approval. Approved this 17th day of March, 1905. (Laws 1905, p. 209.)



## CHAPTER LV.

### VERMONT STATUTE.

*(Public Statutes of 1906, pp. 240-256; Laws of 1908, pp. 27-29; Laws of 1910, pp. 57-59.)*

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- § 1297. Liabilities Already Accrued Under Previous Statutes.
- § 1217. Definitions of Terms.

Sec. 821. "Legatee," "share," etc. The word "legatee," when used in this chapter, shall extend to and include any devisee or distributee named

in a will; the word "legacy," all devises and bequests; and the words "share" or "distributive share," all real or personal property or any interest therein passing under the laws of descent or the intestate laws of this state, or any other state or government; provided that such construction shall not be required, if the same would thereby be repugnant to the manifest intention of the general assembly. (Pub. Stats. 1906, p. 241.)

**§ 1218. Transfers Subject to Tax—Rates.**

Sec. 822. Every person other than the father, mother, husband, wife, lineal descendant, the wife or widow of a son, the husband of a daughter, a stepchild, a child adopted as such during his minority in conformity with the laws of this state, a child of a stepchild or of such adopted child, a bishop in his ecclesiastical capacity for religious uses within this state, or a city or town for cemetery purposes; and every charitable, educational or religious society or institution other than one created and existing under and by virtue of the laws of this state and having its principal office herein, that shall receive in trust or otherwise a legacy or distributive share consisting of or arising from property or an interest therein passing by will, the law of descent or the decree of a court in this state, from a deceased person who owned such property at the date of his decease, shall, except as otherwise provided in this chapter, pay to the state a tax of five per cent of the value in money of such legacy or distributive share. (Pub. Stats. 1906, p. 241; Laws 1908, p. 27; Laws 1910, p. 57.)

**§ 1219. Transfers Intended to Take Effect at Death.**

Sec. 823. Every person, unless one of a class exempted in the preceding section, who acquires title to real or personal estate or any interest therein by voluntary conveyance or gift made or intended to take effect in possession or enjoyment upon or after the death of the grantor or donor, shall pay to the state a tax of five per cent of the value in money of such real or personal estate, or the interest therein conveyed. Such tax shall be a first lien on the real or personal estate thus conveyed or given, until such tax is paid in full. (Pub. Stats. 1906, p. 241.)

**§ 1220. Effect of Payment of Tax to Another State.**

Sec. 824. If a transfer or other similar tax has been lawfully paid to another state or to a government other than the United States, for or on account of an assignment or transfer of stocks, obligations, securities or other evidences of indebtedness, or for or on account of the collection, delivery or assignment of securities, deposits or other assets, and such stocks, obligations, securities, other evidences of indebtedness, deposits or assets, or the proceeds thereof, shall in whole or in part be included in any legacy or distributive share decreed subsequent to the ninth day of December, 1904, by a probate court of this state to a legatee or heir liable to the tax imposed by section eight hundred twenty-two, such legatee or heir shall be liable to pay to this state under the provisions of said section only such part of the tax therein imposed as will make the entire tax both within and without this state, based on such portion of a legacy or distributive

share taxed in such other state or government, equal to five per cent of the total value thereof, to be determined as provided in this chapter. (Pub. Stats. 1906, p. 242; Laws 1908, p. 28.)

**§ 1221. Rebate in Case of Payment of Tax to Another State.**

Sec. 825. No rebate from the full amount of the tax required by the third preceding section shall be allowed by the probate court under the provisions of the preceding section, unless an official receipt or other competent evidence, showing the amount so paid to such other state or government, the date of payment, the rate, the valuation of the property upon which such tax was computed and a brief description thereof, is presented to the probate court. (Pub. Stats. 1906, p. 242.)

**§ 1222. Exemption of Gifts for Burial Lots.**

Sec. 826. Towns, cities, villages, trustees, officials therein and official boards, corporations, associations and persons that receive a legacy in trust or otherwise, the use, income or principal sum of which is to be used for the sole purpose of purchasing, maintaining, caring for or beautifying a burial lot owned by the decedent, or wherein he or any of his kin shall be interred, or for the sole purpose of erecting, caring for or maintaining a monument or other structure thereon, shall be exempt from the payment of taxes imposed by this chapter. (Pub. Stats. 1906, p. 242.)

**§ 1223. Collection of Tax by Executor.**

Sec. 827. An administrator, executor or trustee having in charge or in trust a legacy or distributive share passing to a legatee or heir liable to a tax imposed by this chapter, shall, before paying or delivering the same to such legatee or heir, deduct the tax therefrom or collect it from such legatee or heir. (Pub. Stats. 1906, p. 242.)

**§ 1224. Sale of Property to Pay Tax.**

Sec. 828. In case the tax cannot be deducted therefrom and the legatee or heir neglects or refuses to pay such tax, the probate court may, in the same manner as administrators and executors are licensed to sell real and personal estate for the payment of debts, license such administrator, executor or trustee to sell a part or all of a legacy or distributive share belonging to a person liable to a tax imposed by this chapter, for the payment of such tax. (Pub. Stats. 1906, p. 242.)

**§ 1225. Property not Delivered Until Tax Paid—Lien of Tax.**

Sec. 829. An administrator, executor or trustee shall not deliver any specific legacy, property or the proceeds thereof to any legatee or heir liable to such tax, until such tax has been deducted or collected as aforesaid. Conveyances, mortgages, attachments, sales or assignments of such legacy, share, the proceeds thereof, or any interest therein, shall be subject to the taxes imposed by this chapter; and such taxes shall be a lien on such legacies, distributive shares and the proceeds thereof, until the same are fully paid. (Pub. Stats. 1906, p. 243.)

**§ 1226. Failure of Executor to Collect Tax.**

Sec. 830. A person having in charge or in trust as administrator, executor or trustee, a legacy or distributive share passing to a person in the manner mentioned in section eight hundred and twenty-two, shall be liable for the taxes imposed by this chapter, with interest as hereinafter provided, until the same are fully paid. The administrator, executor or trustee shall collect the tax due the state from a person to whom real estate passes in the manner mentioned in such section from the decedent of whose estate he is administrator, executor or trustee; but if such administrator, executor or trustee is unable to collect such tax before his final account is allowed, he shall make a full and detailed report to the commissioner of state taxes, showing the names of the persons liable to such unpaid tax and a description of the real estate on account of which such tax is due. (Pub. Stats. 1906, p. 243.)

**§ 1227. Legacy Charged upon Real or Personal Estate.**

Sec. 831. When a legacy passing to a legatee liable to such tax is charged upon or payable out of any real or personal estate devised to any person, said person shall, before paying such legacy, deduct such tax therefrom and pay it to the administrator, executor or trustee of the estate of which such real and personal estate is a part. Such tax shall be a lien upon such real or personal estate, until the said tax is paid. Payment thereof may be enforced by the administrator, executor or trustee in the manner provided in the third preceding section. (Pub. Stats. 1906, p. 243.)

**§ 1228. Account of Executor not Allowed Until Tax Paid.**

Sec. 832. A final settlement of the account of an administrator, executor or trustee shall not be allowed by a probate court, unless such account shall show and said court shall find that the taxes imposed by the provisions of this chapter are paid and that one of the triplicate receipts issued by the state treasurer therefor is filed in said probate court. (Pub. Stats. 1906, p. 243.)

**§ 1229. Jurisdiction of Probate Court.**

Sec. 833. The probate court having either principal or ancillary jurisdiction of the settlement of the estate of a decedent shall, except as otherwise provided in this chapter, hear and determine all questions relating to the taxes imposed by this chapter and the value of all legacies and distributive shares upon which such taxes are computed. (Pub. Stats. 1906, p. 243.)

**§ 1230. Appeals to County Court.**

Sec. 834. A legatee, heir or beneficiary affected by a decree of the probate court respecting the taxes imposed by this chapter, the administrator, executor or trustee of an estate of which a legacy or distributive share passing to a person liable to the taxes imposed is a part, and the commissioner of state taxes in behalf of the state, may appeal to the county

court from such orders and decrees of said probate court. (Pub. Stats. 1906, p. 244.)

**§ 1231. Certifying Case to Supreme Court.**

Sec. 835. Whenever the legal construction of a part of this chapter is in dispute and the facts relating thereto have been determined by the probate court wherein the estate is being administered, the judge of such court shall, if no appeal is taken, upon the written application of the administrator, executor or trustee of such estate and the commissioner of state taxes, filed therein before the time for an appeal has expired, certify to the supreme court such part of its finding and decree as relates to such construction, together with the contentions of the parties relating thereto, which shall be filed with such application. (Pub. Stats. 1906, p. 244.)

**§ 1232. Hearing in Supreme Court.**

Sec. 836. Such certificate shall be placed on file in the office of the clerk of the county wherein such probate district is located, on or before twenty-five days from the date of such finding or decree; and thereupon the supreme court shall have jurisdiction of all questions of law presented thereby; and the same shall be heard and determined, as if the cause had been passed to said court upon the pro forma judgment of a county court to which said cause might have been appealed. The final decision and judgment therein shall be certified to the probate court in the same manner and with the same legal effect as provided in section two thousand nine hundred and eighty-eight. (Pub. Stats. 1906, p. 244.)

**§ 1233. Costs of Proceedings.**

Sec. 837. In proceedings therein, involving questions of taxation under the provisions of this chapter, the county or supreme court shall, upon final hearing, make such orders respecting the payment of costs as, in the opinion of said court, are just and equitable. The auditor of accounts shall draw an order for the costs to be paid by the state, upon receipt of a bill thereof signed by the person taxing the same. (Pub. Stats. 1906, p. 244.)

**§ 1234. Determination of Value of Property and Amount of Taxes.**

Sec. 838. The probate court having jurisdiction of an estate may, at any time, or upon the application of the commissioner of state taxes or a legatee, heir, administrator, executor or trustee of such estate, determine, so far as possible, the value of all legacies and distributive shares passing to persons who are liable to the tax imposed by this chapter, and the amount of taxes due therefrom. Notice of such application and of the time and place of the hearing shall be given in the same manner as in case of the settlement of accounts by administrators and executors. (Pub. Stats. 1906, p. 244.)

**§ 1235. Report by Probate Court to Commissioner of Taxes.**

Sec. 839. Said probate court shall notify the commissioner of state taxes in writing, upon blanks to be furnished by him for that purpose, of its

findings and decrees respecting the matter specified in the preceding section, and the date on which such decree was made. (Pub. Stats. 1906, p. 245.)

**§ 1236. Value of Legacy or Distributive Share.**

Sec. 840. The value of a legacy or distributive share mentioned in section eight hundred and twenty-two, except as otherwise provided in this chapter, shall be its actual market value in money at the expiration of one year from the death of the decedent; but if such legacy or share is sooner paid or delivered, the valuation thereof shall be determined as of the date at which the person entitled to the same comes into or is entitled to the possession or the beneficial use thereof. (Pub. Stats. 1906, p. 245.)

**§ 1237. Value of Gift to Take Effect at Death.**

Sec. 841. The value of property passing by voluntary conveyance or gift mentioned in section eight hundred and twenty-three, except as otherwise provided in this chapter, shall be its market value in money at the date the person entitled to the same comes into or is entitled to the possession or the beneficial use thereof. (Pub. Stats. 1906, p. 245.)

**§ 1238. Appointment of Appraisers.**

Sec. 842. Upon the written application signed by the commissioner of state taxes, or by a legatee or heir liable to a tax on account of a legacy or distributive share passing to him in the manner designated in section eight hundred and twenty-two; or by the administrator, executor or trustee of an estate of which such legacy or share is a part, or by the grantee or donee of property passing in the manner designated in section eight hundred and twenty-three, the probate court wherein such estate is being administered or for the district where a part of the property passing in the manner designated in section eight hundred and twenty-three is situated, if no letters of administration have been granted upon the estate of the grantor or donor therein mentioned, or for any district wherein a corporation mentioned in section eight hundred and seventy-six, or a savings bank or trust company or any corporation having securities or assets mentioned in section eight hundred and seventy-eight has its principal place of business in this state, or within which a person holding such assets or securities resides, may, in its discretion, appoint not more than three disinterested persons, to determine, upon hearing or otherwise, the value of all or a part of the real estate or personal property, or of an interest therein, passing to a person liable to a tax imposed by this chapter. (Pub. Stats. 1906, p. 245.)

**§ 1239. Warrant to Appraisers.**

Sec. 843. Said probate court shall issue a warrant to said appraisers and shall therein designate what part of such real and personal property, or interest therein, shall be appraised by them, and shall therein fix the time within which such warrant shall be returnable to said court. (Pub. Stats. 1906, p. 245.)

**§ 1240. Oath of Appraisers—Notice to Parties.**

Sec. 844. Said appraisers shall, before entering upon the performance of their duties, be duly sworn and shall give such notice to the parties as said probate court orders. (Pub. Stats. 1906, p. 246.)

**§ 1241. Authority of Appraisers as to Witnesses.**

Sec. 845. An appraiser shall have the same authority to compel the attendance of witnesses, and to administer oaths thereto, that judges of probate have. (Pub. Stats. 1906, p. 246.)

**§ 1242. Findings and Reports of Appraisers.**

Sec. 846. Said appraisers shall make returns of their findings to the probate court within the time mentioned in such warrant; and said probate court may, in its discretion, accept or reject a part or all of such findings. If such report is rejected, the probate court may appoint new appraisers to determine such valuation, or it may determine such valuation upon hearing. (Pub. Stats. 1906, p. 246.)

**§ 1243. Fees of Appraisers.**

Sec. 847. The fees of said appraisers shall be fixed by the probate court and shall be paid by the administrator, executor or trustee of the estate, if the property so appraised is a part or all of an estate in which letters of administration have been granted within this state. In case no letters of administration have been granted, the fees of said appraisers, when fixed as aforesaid, shall be paid by an order drawn by the auditor of accounts. (Pub. Stats. 1906, p. 246.)

**§ 1244. Agreement by Commissioner of Taxes With Executor as to Valuation.**

Sec. 848. Whenever it is necessary under the provisions of this chapter to establish the value of property or an interest therein, the commissioner of state taxes may agree upon such valuation with the administrator, executor or trustee of an estate of which such property is a part. This section shall apply to any agreement made with a foreign administrator, executor or trustee. (Pub. Stats. 1906, p. 246.)

**§ 1245. Expiration of Such Agreement in Writing.**

Sec. 849. In cases where the valuation of a part or all of the property mentioned in the preceding section or of any interest therein has been established by agreement pursuant to the preceding section, the commissioner of state taxes and said administrator, executor or trustee shall cause such agreement to be written, and specify therein the various items of property and the value of each item. (Pub. Stats. 1906, p. 246.)

**§ 1246. Filing of Agreement With Various Officers.**

Sec. 850. One copy of the agreement specified in the preceding section shall be filed in the office of the commissioner of state taxes, one with the state treasurer, and one in the probate court, if any, having jurisdiction



of such estate within this state. In case a foreign administrator, executor or trustee is a party to such agreement, one copy thereof shall be delivered to him. (Pub. Stats. 1906, p. 246.)

**§ 1247. Affirmance or Setting Aside of Agreement.**

Sec. 851. The probate court shall have power to affirm or set aside the agreement mentioned in the three preceding sections, in all estates within its jurisdiction; and the state treasurer may, in his discretion, set aside any such agreed statement of valuation to which a foreign administrator, executor or trustee is a party, if he is satisfied that the interests of the state so require. (Pub. Stats. 1906, p. 246.)

**§ 1248. Effect of Setting Aside Agreement.**

Sec. 852. If the agreed statement of valuation hereinbefore mentioned is set aside for any cause, the value of such property shall be determined as hereinbefore otherwise provided. (Pub. Stats. 1906, p. 247.)

**§ 1249. Determination of Value of Life or Contingent Estate.**

Sec. 853. When it becomes necessary for the purpose of computing a tax imposed by this chapter to determine the value at the time such tax accrues of an interest in property arising from the bequest or devise of the use or income thereof for the term of an individual life or lives, or involving the contingency of the duration of such life or lives, it shall be determined according to the "American Experience Table of Mortality," with interest at the rate of three and one-half per cent per annum. (Pub. Stats. 1906, p. 247.)

**§ 1250. Determination of Value of Annuities, etc.**

Sec. 854. When it becomes necessary for the purpose of computing a tax imposed by this chapter to determine the value at the time such tax accrues of an annuity or an interest in property arising from the bequest or devise of the use or income thereof for a term of years or for a period in which the life duration or life contingency is not involved, the value shall be determined by discount tables computed at the rate of three and one-half per cent per annum. (Pub. Stats. 1906, p. 247.)

**§ 1251. Valuation of Yearly Income.**

Sec. 855. In making the computation specified in the two preceding sections, the probate court shall determine the amount of such yearly income, whether for life or for a term of years, or the probable average annual value of the use or income of such estate for life or for a term of years. (Pub. Stats. 1906, p. 247.)

**§ 1252. Mortality and Discount Tables.**

Sec. 856. The commissioner of state taxes shall procure suitable tables for the purposes of this chapter and may cause the same or a part thereof to be printed in convenient form with proper explanation for the use of the probate courts within this state, and such tables shall be used in com-

puting the value of yearly incomes or life estates mentioned in this chapter. The auditor of accounts shall draw his order to defray the expenses incurred under this section. (Pub. Stats. 1906, p. 247.)

**§ 1253. Estates for Life or for Years and Remainders.**

Sec. 857. Whenever a person bequeaths or devises the use of property for the term of a natural life or lives, or for a term of years, or gives or conveys such use in the manner provided in section eight hundred twenty-three, to or for the use of any person, society, institution or corporation exempt from the payment of a tax imposed by this chapter, and bequeaths, devises, gives or conveys the remainder to a person, society, institution or corporation subject to the taxes hereinbefore imposed, the value of the prior estate shall, in the manner hereinbefore provided, be deducted from the appraised value of such property; and the person entitled to such remainder shall be liable to the tax imposed by this chapter. Such tax shall become due and payable at the same time that a tax would become due and payable, if the entire property, instead of a remainder therein, had passed to the person receiving such remainder. (Pub. Stats. 1906, p. 247; Laws 1908, p. 28.)

**§ 1254. Bequest to Executor in Lieu of Compensation.**

Sec. 858. When a decedent appoints one or more executors or trustees and, in lieu of their compensation, makes a bequest or devise of property to them which would otherwise be liable to a tax imposed by this chapter, or appoints them his residuary legatees, and such bequests, devises or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to the taxes imposed by this chapter. The probate court having jurisdiction of their accounts shall determine what would have been such reasonable compensation, and the amount of such excess, if any. (Pub. Stats. 1906, p. 248.)

**§ 1255. Receipts to be Issued by State Treasurer.**

Sec. 859. The state treasurer shall, upon receiving the amount of a tax under the provisions of this chapter, issue receipts in triplicate to the person paying the tax, who shall forthwith file one copy thereof with the auditor of accounts, one with the commissioner of state taxes and one with the probate court wherein the estate is administered; provided that the person paying such tax upon property passing in any other manner than that described in section eight hundred and twenty-two may retain one copy of such receipt instead of filing the same with the probate court. (Pub. Stats. 1906, p. 248.)

**§ 1256. Rebate in Case of Excessive Payment.**

Sec. 860. Whenever the state treasurer has received money on account of a tax imposed by this chapter in excess of the amount finally fixed by a court having jurisdiction thereof, or in excess of the amount otherwise determined under the provisions of this chapter, the commissioner of state taxes may certify the amount of such excess and the name of the person

entitled thereto to the auditor of accounts, who shall thereupon draw an order for such excess, in favor of the person designated in such certificate. Said commissioner shall execute such certificate in quadruplicate and shall deliver one copy thereof to the person entitled to such rebate, file one with the state treasurer, and one with the auditor of accounts and retain one for his own files. (Pub. Stats. 1906, p. 248.)

**§ 1257. Time for Payment of Tax.**

Sec. 861. Taxes imposed by this chapter, unless otherwise provided, shall be payable to the state treasurer on or before the expiration of two years from the date of the death of the decedent. (Pub. Stats. 1906, p. 248.)

**§ 1258. Payment of Tax on Delivery of Distributive Share.**

Sec. 862. When legacies or distributive shares are delivered or paid within such two years to a legatee or heir, the taxes due on account of such legacies or shares shall be paid to the state treasurer at the time such legacies or shares are paid or delivered. (Pub. Stats. 1906, p. 249.)

**§ 1259. Extension of Time in Certain Cases.**

Sec. 863. A probate court administering an estate may extend the time within which a tax imposed by this chapter shall be due and payable, whenever the circumstances of the case so require. (Pub. Stats. 1906, p. 249.)

**§ 1260. Extension of Time Where Value not Determinable.**

Sec. 864. If, for any reason, said probate court shall, at any time, be unable to determine the value of a part or all of such legacies or shares, or the amount of a part or all of a tax due the state thereon, it shall, from time to time, extend the time within which such taxes shall become due and payable. (Pub. Stats. 1906, p. 249.)

**§ 1261. Records to be Kept of Extension of Time.**

Sec. 865. Whenever the probate court extends the time for assessment and payment of a tax imposed by this chapter, it shall make a record thereof and shall forthwith file with the commissioner of state taxes a statement showing the date to which such extension is made and what legacies or shares are thereby affected. (Pub. Stats. 1906, p. 249.)

**§ 1262. Time for Payment of Tax.**

Sec. 866. Taxes due under the provisions of section eight hundred and twenty-three shall be payable on or before the expiration of three months from the date of the death of the grantor or donor therein mentioned, unless the grantee or donee sooner enters into possession of the property acquired in the manner therein mentioned; in which case, the tax shall thereupon become payable. (Pub. Stats. 1906, p. 249.)

**§ 1263. Inventory of Property.**

Sec. 867. A person who as grantee or donee comes into the possession or enjoyment of property in the manner specified in section eight hundred

and twenty-three shall forthwith file with the commissioner of state taxes a just and true inventory under oath of all such property, giving a description of the property included in such conveyances, deeds and gifts. (Pub. Stats. 1906, p. 249.)

**§ 1264. Failure to File Inventory.**

Sec. 868. A person who neglects or refuses to file the inventory provided in the preceding section shall be subject to a penalty of not more than ten per cent nor less than five per cent of the value of the property which so comes into his possession or enjoyment, to be recovered in an action on this statute brought in the name of the state by the commissioner of state taxes. (Pub. Stats. 1906, p. 249.)

**§ 1265. Interest on Taxes.**

Sec. 869. Taxes not paid to the state treasurer when due under the provisions of this chapter, unless the time for payment thereof has been extended by the probate court pursuant to the provisions of this chapter, shall bear interest from the date at which the same become payable until the same are paid. (Pub. Stats. 1906, p. 249.)

**§ 1266. Reports to be Made by Register of Probate.**

Sec. 870. In estates wherein property may be decreed to a legatee or heir liable to a tax imposed by this chapter, the register of the probate court having jurisdiction thereof shall, at the time of granting letters of administration therein, upon blanks to be furnished by the commissioner of state taxes, report the name of the decedent, the date of his death, the name and address of the administrator or executor, and the relationship, if any, and the names of all known legatees or heirs liable to the taxes imposed by this chapter. (Pub. Stats. 1906, p. 250.)

**§ 1267. Report to be Made by Register of Probate to Commissioner of Taxes.**

Sec. 871. Whenever the probate court fixes a date for the determination of the amount due to the state on account of a tax imposed by this chapter, or for the determination of the value of a legacy or share passing to a legatee or heir liable to such tax, or for the determination of any matter pertaining to a tax imposed by this chapter, the register of probate shall, upon blanks furnished for that purpose by the commissioner of state taxes, forthwith mail to said commissioner a statement showing the name of the estate, the date of such hearing, the nature thereof, whether or not the property out of which such legacy or share is to be decreed is in money or its equivalent, and, if in other property, a brief description thereof as shown by the files of said court. If such hearing is continued, notice thereof shall be given in person or by mail to said commissioner. (Pub. Stats. 1906, p. 250.)

**§ 1268. Application by Tax Commissioner for Administration.**

Sec. 872. If, upon the decease of a person leaving an estate passing in whole or in part to legatees or heirs liable to the taxes imposed by this

chapter, no will disposing of such estate is offered for probate within the time prescribed by law and no application for administration is made within four months from the date of such decease, the commissioner of state taxes shall apply to the probate court for the appointment of an administrator of such estate. (Pub. Stats. 1906, p. 250.)

**§ 1269. Notice to Commissioner of Taxes of Taxable Transfers.**

Sec. 873. A judge or register of probate shall forthwith notify the commissioner of state taxes, upon blanks to be furnished by him, of estates mentioned in the preceding section, known to them or either of them, in which no will or application for administration is presented within the time specified. (Pub. Stats. 1906, p. 250.)

**§ 1270. Copies of Papers and Records.**

Sec. 874. An administrator, executor, trustee or other legal representative of a decedent, appointed by a probate court within this state or by a foreign court or government, shall, when required in writing by the commissioner of state taxes, within a reasonable time after receiving such requisition and without expense to the state, furnish said commissioner a certified copy of any part or all of any record, or of the will, inventory or other document required to be filed in the court wherein the estate of which he is such administrator, executor, trustee or legal representative is being administered. (Pub. Stats. 1906, p. 250.)

**§ 1271. Refusal of Officer to Furnish Copies.**

Sec. 875. An administrator, executor, trustee or legal representative mentioned in the preceding section, appointed by a probate court in this state, shall forfeit to the state five dollars for each day's neglect or refusal to provide the certified copies therein specified, within a reasonable time after receiving requisition therefor; and if a foreign administrator, executor, trustee or legal representative neglects or refuses to furnish the copies therein required, no certificate shall be given by the commissioner of state taxes under the provisions of section eight hundred and eighty-two, until such certified copies are furnished and a reasonable time has thereafter elapsed. (Pub. Stats. 1906, p. 251.)

**§ 1272. Transfers of Stock or Obligations by Foreign Executor.**

Sec. 876. I. If a foreign administrator, executor or trustee assigns or transfers any stock or obligation in a domestic corporation, or in a foreign corporation having its principal place of business located in this state, or in a national bank located in this state, owned by a deceased nonresident at the time of his death and passing by will or the laws of descent of the state or government wherein such administrator, executor or trustee receives his appointment, to or for the use of any person other than the father, mother, husband, wife, lineal descendant, stepchild, child adopted as aforesaid, child of a stepchild or of such adopted child, the wife or widow of a son, the husband of a daughter, a bishop in his ecclesiastical capacity for religious uses within this state, a town or city in this state for cemetery

purposes, or to or for the use of a charitable, educational or religious society or institution created and existing under the laws of this state, such administrator, executor or trustee shall pay to the state a tax equal to five per cent of the value in money, at the date of such assignment or transfer, of such part or all of such stocks or obligations so passing by will or the laws of descent.

II. If such taxes are not paid on or before the date of such assignment or transfer, they shall be a lien on such stock or obligation until the same are paid.

III. In determining the amount of any tax imposed by this section, no deductions on account of debts or expenses of administration shall be made unless such debts or expenses have been allowed by the probate, surrogate or other court having original jurisdiction of said estate.

IV. The words "stock" and "obligation," as used in this section, shall be construed to include the proceeds thereof. (Pub. Stats. 1906, p. 251; Laws 1910, p. 57.)

**§ 1273. Penalty for Recording Transfer of Stock Without Payment of Tax.**

Sec. 877. A domestic corporation, or a foreign corporation having its principal place of business in this state, or a national bank located in this state, which records a transfer of a share of its stock or of its obligation, made by a foreign administrator, executor or trustee, or which issues a new certificate for a share of its stock or of the transfer of an obligation aforesaid at the instance of a foreign administrator, executor or trustee, before the taxes imposed by the preceding section are paid, shall be liable for such tax in an action upon this statute brought in the name of the state by the commissioner of state taxes. (Pub. Stats. 1906, p. 251.)

**§ 1274. Transfer or Receipts of Securities or Assets by Foreign Executor or Legatee.**

Sec. 878. I. If a foreign administrator, executor or trustee of a non-resident decedent, or a legatee or heir of such decedent, or an assignee of such administrator, executor, trustee, legatee or heir, collects, receives or assigns securities or assets, being in this state at the time of the death of such nonresident decedent and belonging to him at his decease, which shall pass in whole or in part by will or the laws of descent of the state or government wherein such foreign administrator, executor or trustee has received his appointment, to or for the use of any person other than the father, mother, husband, wife, lineal descendant, stepchild, child adopted as aforesaid, child of a stepchild or of such adopted child, the wife or widow of a son, the husband of a daughter, a bishop in his ecclesiastical capacity for religious uses within this state, or a town or city in this state for cemetery purposes, or to or for the use of a charitable, educational or religious society or institution created and existing under the laws of this state, such foreign administrator, executor or trustee, the assignee of such securities or assets, or any legatee or heir of such nonresident decedent, shall pay to the state a tax equal to five per cent of the value in money,

at the date of the delivery, collection or assignment of such part or all of such securities or assets so passing by will or the laws of descent.

II. If such taxes are not paid on or before the date of such delivery, collection or assignment, they shall be a lien on such securities or assets until such taxes are paid.

III. In determining the amount of any tax imposed by this section, no deductions on account of debts or expenses of administration shall be made, unless such debts or expenses have been allowed by the probate, surrogate or other court having original jurisdiction of said estate. (Pub. Stats. 1906, p. 252; Laws 1910, p. 58.)

**§ 1275. Transfer to Foreign Executor not Made Until Taxes Paid.**

Sec. 879. The securities or assets mentioned in the preceding section shall not be delivered or transferred by a person or corporation to a foreign administrator, executor or trustee of a nonresident decedent, nor to a legatee or heir of such decedent, nor to an assignee of such administrator, executor, trustee, legatee or heir, before the taxes, if any, imposed by the preceding section are paid, or the certificate mentioned in section eight hundred eighty-two is issued by said commissioner. Said commissioner, or person designated by him in writing, may at all reasonable times examine such securities or assets. (Pub. Stats. 1906, p. 252; Laws 1910, p. 58.)

**§ 1276. Failure to Mail or Deliver Notice.**

Sec. 880. Failure to mail or deliver such notice as provided in the preceding section shall render the person or corporation required to report such delivery or transfer liable in an action upon this statute, brought in the name of the state by the commissioner of state taxes, for all taxes imposed by the second preceding section. (Pub. Stats. 1906, p. 252.)

**§ 1277. Payment of Bank Deposit.**

Sec. 881. No savings bank, savings institution, trust company or savings bank and trust company shall pay a part or all of a deposit, or any interest or dividend thereon, to an administrator or executor, under the provisions of section four thousand six hundred and thirty-seven, nor transfer the same to the account of any person upon its records, unless the certificate mentioned in the following section has been delivered thereto. (Pub. Stats. 1906, p. 252.)

**§ 1278. Certificate of Nonliability by Tax Commissioner.**

Sec. 882. A certificate signed by the commissioner of state taxes certifying that an administrator, executor, trustee, legatee, heir or assignee is not liable to the taxes imposed by sections eight hundred and seventy-six and eight hundred and seventy-eight, or certifying that such taxes are paid, shall operate as a waiver or discharge of all liability to the state on the part of any person or corporation mentioned in the six preceding sections. (Pub. Stats. 1906, p. 253.)

**§ 1279. Notice by Bank to Tax Commissioner.**

Sec. 883. A savings bank, savings institution, trust company, or savings bank and trust company shall notify the commissioner of state taxes, upon blanks to be furnished by him, of the decease of any nonresident depositor and the name and residence of any foreign administrator, executor or trustee as soon as the same is known thereto. (Pub. Stats. 1906, p. 253.)

**§ 1280. Bank not to Pay Deposit Without Consent of Tax Commissioner.**

Sec. 884. If a savings bank, savings institution, trust company, or savings bank and trust company has notice of the death of a depositor residing within this state at the time of his decease, or has reasonable grounds for believing him to be dead, it shall not, without the consent in writing of the commissioner of state taxes, pay or transfer upon its records a part or all of a deposit or account standing in the name of such decedent, for which an order, assignment or other instrument in writing signed by such decedent has been given, other than checks given in the ordinary course of business. Notice in writing shall be forthwith given by such corporation to said commissioner, setting forth the character of such order, assignment or other instrument, and the name and residence of the payee or assignee therein named. (Pub. Stats. 1906, p. 253.)

**§ 1281. Failure of Bank or Trust Company to Obey Law—Penalty.**

Sec. 885. A savings bank, savings institution, trust company, or savings bank and trust company, that willfully violates a provision of the first, second and fourth preceding sections, shall be liable to the state, in an action on this statute, brought in the name of the state by the commissioner of state taxes, for all taxes imposed by sections eight hundred and seventy-six and eight hundred and seventy-eight upon a person liable to the same. But no such action shall be commenced without the consent of the governor. (Pub. Stats. 1906, p. 253.)

**§ 1282. Petition by Tax Commissioner to Determine Amount of Tax Due.**

Sec. 886. Whenever the commissioner of state taxes claims that a tax is due on account of a transfer of property in the manner described in sections eight hundred and twenty-three, eight hundred and seventy-six, eight hundred and seventy-eight or eight hundred and eighty-four, he may, in the name of the state, petition the court of chancery in any county to determine the amount of any or all taxes due, as provided in such sections, and to establish such taxes as a lien upon the property passing or being transferred in the manner therein mentioned. (Pub. Stats. 1906, p. 253.)

**§ 1283. Service of Petition.**

Sec. 887. Service of the petition mentioned in the preceding section may be made in the manner provided by law; and service thereof upon a foreign administrator, executor, trustee, legatee or assignee may be made by delivering a copy of such petition to the custodian of the property in this state therein named. (Pub. Stats. 1906, p. 254.)



**§ 1284. Hearing in Court of Chancery.**

Sec. 888. A court of chancery or a chancellor shall, subject to the right of appeal to the supreme court, hear and determine such cause at a stated term of said court or during vacation, and may grant temporary and permanent injunctions restraining any or all persons or corporations mentioned in the sections named in the second preceding section, from making any transfer or other disposition of the property named therein, until all taxes imposed by this chapter and found to be due on account of the passing of such property in the manner therein mentioned are paid, and shall make all necessary orders and decrees to carry out the provisions of this chapter. (Pub. Stats. 1906, p. 254.)

**§ 1285. Appellate Proceedings.**

Sec. 889. In cases of appeals involving questions arising under the provisions of this chapter, the state shall not be required to give a bond or recognizance for costs or for an appeal, nor an injunction bond. (Pub. Stats. 1906, p. 254.)

**§ 1286. Proceedings Installed by Tax Commissioner in Probate Court.**

Sec. 890. A probate court, upon application of the commissioner of state taxes, may summon and examine, upon oath, respecting any matter pertaining to a tax or penalty imposed by this chapter, an officer, stockholder, member or agent of a corporation mentioned in sections eight hundred and seventy-six, eight hundred and eighty-one, eight hundred and eighty-three or eight hundred and eighty-four, or of any corporation or banking institution having its principal place of business in the probate district wherein such probate court has jurisdiction; a custodian of the securities or assets, or the proceeds thereof, mentioned in section eight hundred and seventy-eight, residing or having its principal place of business in such probate district; an administrator, executor, trustee, legatee, heir or assignee mentioned in the last-named section, entitled to receive or who has received any part or all of such securities or assets, or the proceeds thereof, held by such custodian; a member or officer of a society or institution, and a person entitled to receive or who has received a part or all of such securities, assets or proceeds thereof mentioned in section eight hundred and seventy-eight from a custodian thereof residing or having its principal place of business in such probate district, or who is entitled to receive or has received, by assignment or otherwise, a part or all of a deposit mentioned in sections eight hundred and eighty-one or eight hundred and eighty-four, from a banking institution having its principal place of business in such probate district; and the grantee or donee of property, or an interest therein, passing in the manner set forth in section eight hundred and twenty-three, within such probate district. (Pub. Stats. 1906, p. 254.)

**§ 1287. Jurisdiction of Court in Such Proceedings.**

Sec. 891. If a probate court has issued a summons for a person mentioned in the preceding section, or has examined a person therein named concerning any matter pertaining to a tax or penalty imposed by this

chapter, said court shall thereupon have jurisdiction to summon and so examine any and all persons therein named, notwithstanding the residence of such person, the location of the principal place of business of a corporation specified in the preceding section, or the location of property therein specified, is in some town or city without the probate district within which said court has original jurisdiction to issue such summons and conduct such examination. (Pub. Stats. 1906, p. 255.)

**§ 1288. Issuance of Letters of Administration.**

Sec. 892. If, upon the examination specified in the two preceding sections, the probate court wherein such examination is had, determines that, in order to aid in the collection of a tax imposed by this chapter, an administrator should be appointed to administer upon the estate whereof property within its original jurisdiction, passing to a person liable to a tax imposed by this chapter, is the whole or a part, said probate court shall take jurisdiction of such estate and shall thereupon issue letters of administration. (Pub. Stats. 1906, p. 255.)

**§ 1289. Jurisdiction of Court After Issuance of Letters.**

Sec. 893. Whenever letters of administration are issued upon an estate mentioned in the preceding section, the probate court issuing such letters shall have jurisdiction of all property within this state belonging thereto. The same proceedings shall be had in such estate as provided by law for the settlement of an estate wherein no will is probated. (Pub. Stats. 1906, p. 255.)

**§ 1290. Production of Books of Accounts, Records, etc.**

Sec. 894. The probate court shall have authority to require, by summons or otherwise, the production of books of account, records or documents kept or possessed by a corporation or person mentioned in the third and fourth preceding sections, concerning matters as to which information shall be required to carry out the provisions of this chapter. (Pub. Stats. 1906, p. 255.)

**§ 1291. Power of Probate Court to Issue Summons or Citation.**

Sec. 895. A probate court shall have power to summon a person not hereinbefore specifically mentioned to appear before said court to give evidence therein respecting any matter or thing hereinbefore mentioned which shall be the subject of investigation; and said court may also require such person to produce in court any book of account, record or document pertinent to such investigation. (Pub. Stats. 1906, p. 255.)

**§ 1292. Compensation of Witnesses.**

Sec. 896. Persons except those liable to pay a tax imposed by this chapter shall be allowed the same per diem and travel fees as witnesses in county court, to be paid by the state on the certificate of the commissioner of state taxes. (Pub. Stats. 1906, p. 255.)

**§ 1293. Penalty for Refusal to Appear or Testify Before Probate Court**

Sec. 897. A person or officer designated in sections eight hundred and ninety, eight hundred and ninety-one or eight hundred and ninety-five who refuses or neglects to appear before the probate court in obedience to the summons therein mentioned, or refuses to be sworn as hereinbefore provided, or neglects or refuses to produce the books, records or documents mentioned in sections eight hundred and ninety-four and eight hundred and ninety-five, or refuses to testify concerning any matter respecting which he shall be lawfully examined, shall be fined not more than five thousand dollars nor less than five hundred dollars. (Pub. Stats. 1906, p. 256.)

**§ 1294. Report of Listers.**

Sec. 898. Listers in the several towns shall annually, within ten days after the date on which the grand list is required by law to be filed by them with the town clerk, report to the commissioner of state taxes, upon blanks to be furnished by him, the names of persons who acquired, within the year ending with the first day of April in the year in which such report is made, real or personal estate situate in such town, or an interest therein, passing from a deceased person by the laws of descent or in the manner specified in section eight hundred and twenty-three. (Pub. Stats. 1906, p. 256.)

**§ 1295. False Returns or Report—Perjury.**

Sec. 899. A person who willfully swears falsely to a return, report or statement, or upon an examination hereinbefore mentioned, shall be guilty of perjury. (Pub. Stats. 1906, p. 256.)

**§ 1296. Time When Statute Takes Effect.**

Sec. 900. The foregoing sections of this chapter, in so far as they pertain to a tax imposed upon a person, corporation, society or institution that shall, in any manner hereinbefore provided, receive property or any interest therein passing from a deceased person, shall also apply to the estates of all persons who deceased prior to December ninth, nineteen hundred and four, but whose estates were not then decreed or distributed; but if any part of such estate has been lawfully paid or decreed prior to such date, such part shall not be affected by this chapter; nor shall this chapter apply to an act done prior to such date for which a penalty is hereinbefore provided. (Pub. Stats. 1906, p. 256.)

**§ 1297. Liabilities Already Accrued Under Previous Statutes.**

Sec. 901. This chapter shall not, except as otherwise provided, affect the liability of any person, corporation, society or institution to pay taxes already accrued under the provisions of number forty-six of the acts of eighteen hundred and ninety-six, nor any proceedings affecting the same. (Pub. Stats. 1906, p. 256.)

## CHAPTER LVI.

### VIRGINIA STATUTE.

(*Acts of 1903, c. 148; 2 Code (1904), p. 2219; Acts of 1910, pp. 229, 230; 3 Code Supp. (1910), pp. 530, 531.*)

- § 1298. Transfers Subject to Tax—Rates—Exemptions.
- § 1299. Collection of Tax by Personal Representative.
- § 1300. Collection of Tax on Real Estate—Lien and Sale.
- § 1301. Payment to County Treasurer.
- § 1302. Determination of Tax by Court—Duties of Clerk, Auditor and Treasurer.
- § 1303. Penalty for Failure to Pay Tax.

#### § 1298. Transfers Subject to Tax—Rates—Exemptions.

Sec. 44. (a) Where any estate in this commonwealth of any decedent shall pass under his will, or the laws regulating descents and distributions, to any other person or for any other use than to or for the use of the grandfather and grandmother, father, mother, husband, wife, brother, sister or lineal descendant of such decedent, the estate so passing shall be subject to a tax at the rate of five per centum on every hundred dollars value thereof; provided, that such tax shall not be imposed upon any property bequeathed or devised where such bequest or devise is exclusively for state, county, municipal, benevolent, charitable, educational, or religious purposes.

#### § 1299. Collection of Tax by Personal Representative.

(b) The personal representative of such decedent shall pay the whole of such tax, except on real estate, to sell which or to receive the rents and profits of which he is not authorized by the will, and the sureties on his official bond shall be bound for the payment thereof.

#### § 1300. Collection of Tax on Real Estate—Lien and Sale.

(c) Where there is no personal estate, or the personal representative is not authorized to sell or receive the rents and profits of the real estate, the tax shall be paid by the devisee or devisees, or those to whom the estate may descend by operation of law, and the tax shall be a lien on such real estate, and the treasurer may rent or levy upon and sell so much of said real estate as shall be sufficient to pay the tax and expenses of sale, et cetera.

#### § 1301. Payment to County Treasurer.

(d) Such payment shall be made to the treasurer of the county or city in which certificate was granted such personal representative for obtaining probate of the will or letters of administration.

**§ 1302. Determination of Tax by Court—Duties of Clerk, Auditor and Treasurer.**

(e) The corporation or hustings court of a city, the circuit court of a county or city, the chancery court of the city of Richmond, the law and chancery court of the city of Norfolk, or the clerk of the circuit court of a county or city before whom a will is probated or administration is granted, shall determine the collateral inheritance tax, if any, to be paid on the estate passing by will or administration, and shall enter of record in the order book of the court or clerk, as the case may be, by whom such tax shall be paid and the amount to be paid. The clerk of the court shall certify a copy of such order to the treasurer of his county or city and to the auditor of public accounts, for which services the clerk shall be paid a fee of two dollars and fifty cents by the personal representative of the estate. The auditor of public accounts shall charge the treasurer with the tax, and the treasurer shall pay the same into the treasury as soon as collected, less a commission of five per centum. Every personal representative or other party or officer failing in any respect to comply with this section shall forfeit one hundred dollars.

**§ 1303. Penalty for Failure to Pay Tax.**

(f) Any personal representative, devisee or person to whom the estate may descend by operation of law, failing to pay such tax before the estate on which it is chargeable is paid or delivered over (whether he be applied to for the tax or not) shall be liable to damages thereon at the rate of ten per centum per annum for the time such estate is paid or delivered over until the tax is paid, which damages may be recovered with the tax, on motion of the commonwealth, and in the name of the commonwealth against him, in the circuit court for the county or in the corporation court of the city wherein such tax was assessed, except that in the city of Richmond the motion shall be in the chancery court. Such estate shall be deemed paid or delivered at the end of a year from the decedent's death, unless and except so far as it may appear that the legatee or distributee has neither received such estate nor is entitled then to demand it. (1910, pp. 229, 230; 3 Code Supp. (1910), p. 530.)

## CHAPTER LVII.

## WASHINGTON STATUTE.

(*2 Remington & Ballinger's Codes and Statutes, pp. 2082-2083; Laws of 1911, p. 60.*)

- § 1304. Transfers Subject to Tax—Deductions—Interest—Lien.
- § 1305. Rates of Taxation.
- § 1306. Property Subject to Tax.
- § 1307. Property Belonging to Foreign Estate.
- § 1308. Appraisement of Property and Collection of Tax.
- § 1309. Estates for Life and Remainder in Favor of Lineal Descendant.
- § 1310. Estate for Life in Favor of Collateral Relatives.
- § 1311. Bequest to Executor in Lieu of Commissions.
- § 1312. Legacy Charged upon Real Estate.
- § 1313. Collection of Tax by Executor.
- § 1314. Payment to State Treasurer—Receipts—Interest.
- § 1315. Appraisers and Appraisement.
- § 1316. Transfer of Stock or Obligations by Foreign Executor.
- § 1317. Statement of Character of Property and Names of Heirs.
- § 1318. Extension of Time for Filing Appraisement.
- § 1319. Compromise by Tax Commissioners.
- § 1320. Powers and Duties of Tax Commissioners.
- § 1321. Exemptions of Charitable Institutions.

§ 1304. Transfers Subject to Tax—Deductions—Interest—Lien.

Sec. 9182. All property within the jurisdiction of this state, and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the statutes of inheritance of this or any other state, or by deed, grant, sale or gift made in contemplation of the death of the grantor or donor, or by deed, grant, sale or gift made or intended to take effect in possession or in enjoyment after the death of the grantor or donor to any person in trust or otherwise, shall, for the use of the state, be subject to a tax as provided for in section 9183, after the payment of all debts owing by the decedent at the time of his death, the local and state taxes due from the estate prior to his death, and a reasonable sum for funeral expenses, court costs, including cost of appraisement made for the purpose of assessing the inheritance tax, the statutory fees of executors, administrators or trustees, and no other sum, but said debts shall not be deducted unless the same are allowed or established within the time provided by law, unless otherwise ordered by the judge or court of the proper county, and all administrators, executors and trustees, and any such grantee under a conveyance, and any such donee under a gift, made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them, with lawful interest until the same shall have been paid. The inheritance tax shall be and remain a lien on such estate from the death of the

decedent until paid. (Laws 1901, p. 67; Laws 1907, p. 499; 2 Rem. & Bal. Codes & Stats., p. 2082.)

#### § 1305. Rates of Taxation.

Sec. 9183. The inheritance tax shall be and is to be levied on all estates subject to the operation of this act on all sums above the first ten thousand dollars, where the same shall pass to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, or lineal descendant of an adopted child, one (1) per centum. On all sums not exceeding the first fifty thousand dollars, of three per centum, where such estate passes to collateral heirs to and including the third degree of relationship, and to six per centum where such estates pass to collateral heirs beyond the third degree, or to strangers to the blood. On all sums above the first fifty thousand dollars and not exceeding the first one hundred thousand dollars, four and one-half per centum to collateral heirs, to and including the third degree, and nine per centum to collateral heirs, beyond the third degree, or to strangers to the blood. And on all sums in excess of the first one hundred thousand dollars, the tax shall be six per centum to collateral heirs to and including the third degree, and twelve per centum to collateral heirs beyond the third degree or to strangers to the blood. (Laws 1901, p. 68; Laws 1907, p. 500; 2 Rem. & Bal. Codes & Stats., p. 2082; Laws 1911, p. 60.)

#### § 1306. Property Subject to Tax.

Sec. 9184. Except as to the limitations prescribed in section 9183 from the inheritance tax and real property located outside the state passing in fee from the decedent owner, the tax imposed under section 9183, shall hereafter be assessed against and be collected from property of every kind, which, at the death of the decedent owner is subject to, or thereafter, for the purpose of distribution, is brought into this state and becomes subject to the jurisdiction of the courts of this state for distribution purposes, or which was owned by any decedent domiciled within the state at the time of the death of such decedent, even though the property of said decedent so domiciled was situated outside of the state. (Laws 1901, p. 68; 2 Rem. & Bal. Codes & Stats., p. 2083.)

#### § 1307. Property Belonging to Foreign Estate.

Sec. 9185. In case of any property belonging to a foreign estate, which estate, in whole or in part, is liable to pay a collateral inheritance tax in this state, the said tax shall be assessed upon the market value of said property remaining after the payment of such debts and expenses as are chargeable to the property under the laws of this state. In the event that the executor, administrator or trustee of such foreign estate files with the clerk of the court having ancillary jurisdiction and with the state board of tax commissioners duly certified statements exhibiting the true market value of the entire [e]state of the decedent owner, and the indebtedness for which the said estate has been adjudged liable, which statements shall be duly attested by the judge of the court having original jurisdiction, the beneficiaries of said estate shall then be entitled to have deducted such proportion of the

said indebtedness of the decedent from the value of the property, as the value of the property within this state bears to the value of the entire estate. (Laws 1901, p. 69; Laws 1907, p. 501; 2 Rem. & Bal. Codes & Stats., p. 2083.)

Section 5 of the Laws of 1901 was repealed by Laws of 1907, page 504.

**§ 1308. Appraisement of Property and Collection of Tax.**

Sec. 9186. All the real estate of the decedent subject to such tax shall, except as hereinafter provided, be appraised within the time provided by law for the appraisement of decedents' estates, and the tax thereon, calculated upon the appraised value after deducting debts for which the estate is liable, shall be paid by the person entitled to said estate within fifteen months from the approval by the court of such appraisement, unless a longer period is fixed by the court, and in default thereof the court may order the same, or so much thereof as may be necessary to pay such tax, to be sold. (Laws 1901, p. 70; 2 Rem. & Bal. Codes & Stats., p. 2083.)

**§ 1309. Estates for Life and Remainder in Favor of Lineal Descendant.**

Sec. 9187. When any person shall devise any real property to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, or lineal descendant of such child, during life or for a term of years, and the remainder to a collateral heir or to a stranger to the blood, the court, upon the determination of such estate for life or years, shall upon its own motion or upon the application of the state board of tax commissioners, cause such estate to be appraised at its then actual market value from which shall be deducted the value of any improvements thereon or betterments thereto, made by the remainderman during the time of the prior estate, to be ascertained and determined by the appraiser and the tax on the remainder shall be paid by such remainderman within six months from the approval of the court of the report of the appraisers. If such tax is not paid within said time, the court may then order said real estate, or so much thereof as may be necessary to pay said tax, to be sold. (Laws 1901, p. 70; Laws 1907, p. 501; 2 Rem. & Bal. Codes & Stats., p. 2084.)

**§ 1310. Estate for Life in Favor of Collateral Relatives.**

Sec. 9188. Whenever any real estate of a decedent shall be subject to such tax, and there be a life estate or interest for a term of years given to a party other than the father, mother, husband, wife, lineal descendant, adopted child, or lineal descendant of such child, and the remainder to a collateral heir or stranger to the blood, the court shall direct the interest of the life estate or term of years to be appraised at the actual value thereof according to the rules or standards of mortality and of value commonly used in actuaries' combined experience tables. The state treasurer is directed to obtain and publish for the use of the courts and appraisers throughout the state, tables showing the average expectancy of life, and the value of annuities or life and term estates, and the present worth or value of remainders and reversions. The taxable value of life, term, deferred or future estates, shall be computed at the rate of four per cent per annum interest. Whenever it is desired to remove



the lien of the inheritance tax on remainders, reversions or deferred estates, parties owning the beneficial interest may pay at any time the said tax on the present worth of such interest determined according to the rules herein fixed. Upon the approval of such appraisal by the court, the party entitled to such life estate or term of years, shall, within sixty days thereafter pay the tax on such life or term estate, and in default thereof the court may order such interest in such estate or so much thereof as shall be necessary to pay such tax, to be sold. Upon the determination of such life estate or term of years, unless the tax on the remainder shall have been previously paid, as provided in this section, the same provision shall apply as to the ascertainment of the amount of the tax and the collection of the same on the real estate in remainder as in like cases is provided in the preceding section. Whenever any personal estate of a decedent shall be subject to such tax, and there be a life estate or interest for a term of years given, the court shall inquire into and determine the value of the life estate or interest for the term of years, and order and direct the amount of the tax thereon, to be paid by the prior estate, and that to be paid by the remainderman, each of whom shall pay their proportion of such tax within six months from such determination, unless a longer period is fixed by the court, and in default thereof the executor, administrator or trustee shall pay the tax out of said property, as the court may direct. (Laws 1901, p. 70; 2 Rem. & Bal. Codes & Stats., p. 2084.)

**§ 1311. Bequest to Executor in Lieu of Commissions.**

Sec. 9189. Whenever a decedent appoints one or more executors or trustees and in lieu of their allowance or commission, makes a bequest or devise of property to them which would otherwise be liable to said tax, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to such tax, and the court having jurisdiction of their accounts, upon its own motion, or on the application of the state board of tax commissioners, shall fix such compensation. (Laws 1901, p. 72; Laws 1907, p. 502; 2 Rem. & Bal. Codes & Stats., p. 2085.)

**§ 1312. Legacy Charged upon Real Estate.**

Sec. 9190. Whenever any legacies subject to said tax are charged upon or payable out of any real estate, the heir or devisee, before paying the legacies, shall deduct said tax therefrom and pay it to the executor, administrator, trustee or state treasurer, and the same shall remain a charge and be a lien upon said real estate until it is paid; and payment thereof shall be enforced by the executor, administrator, trustee or state board of tax commissioners, in the same manner as the payment of the legacy itself could be enforced. (Laws 1901, p. 72; Laws 1907, p. 502; 2 Rem. & Bal. Codes & Stats., p. 2085.)

**§ 1313. Collection of Tax by Executor.**

Sec. 9191. Every executor, administrator or trustee having in charge or trust any property subject to said tax, and which is made payable by him, shall deduct the tax therefrom, or shall collect the tax thereon from the lega-

tee or person entitled to said property, and he shall not deliver any specific legacy or property subject to said tax to any person until he has collected the tax thereon. (Laws 1901, p. 72; 2 Rem. & Bal. Codes & Stats., p. 2085.)

**§ 1314. Payment to State Treasurer—Receipts—Interest.**

Sec. 9192. All taxes imposed by this chapter shall be payable to the state treasurer, who shall issue his receipt therefor in duplicate, one of which shall be filed with the state board of tax commissioners, and those taxes which are made payable by executors, administrators or trustees, shall be paid within fifteen months from the death of the testator or intestate, or within fifteen months from assuming the trust by such trustee, unless a longer period is fixed by the court. All taxes not paid within the time prescribed in this section shall draw interest at the legal rate until paid. (Laws 1901, p. 72; Laws 1907, p. 502; 2 Rem. & Bal. Codes & Stats., p. 2085.)

**§ 1315. Appraisers and Appraisement.**

Sec. 9193. The superior court, having jurisdiction, shall appoint three suitable, disinterested persons to appraise the estate and effects of deceased persons for inheritance tax purposes, and unless otherwise provided by order of the court, the appraisers appointed under the probate law to appraise the estate and effects of deceased persons, shall be and constitute the appraisers under the provisions of this chapter. It shall be the duty of all such appraisers to forthwith give notice to the state board of tax commissioners, of the time and place at which they will appraise such property, which time shall not be less than twenty days from the date of such notice. The notice shall be served in the same manner as is prescribed for the commencement of civil actions, unless a different one is ordered by the court or judge, and the notice, with the proof of the service thereof, shall be returned to the court with the appraisement. The state board of tax commissioners or any person interested in the estate appraised, may file exceptions to the appraisement, which shall be heard and determined by the court having jurisdiction in probate of the estate involved. If, upon the hearing, the court finds the amount at which the property is appraised is its market value and the appraisement was fairly and in good faith made, it shall approve such appraisement; but if it finds that the appraisement was made at a greater or less sum than the market value of the property, or that the same was not fairly or in good faith made, it shall set aside the appraisement and determine such value. The state board of tax commissioners, or anyone interested in the property appraised, may appeal to the supreme court from the order of the superior court in the premises. (Laws 1901, p. 73; Laws 1905, p. 222; Laws 1907, p. 504; 2 Rem. & Bal. Codes & Stats., p. 2086.)

**§ 1316. Transfer of Stock or Obligations by Foreign Executor.**

Sec. 9194. If a foreign executor, administrator or trustee shall assign any corporate stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to such tax, the tax shall be paid to the state treasurer on or before the transfer thereof, otherwise, the corporation permitting its stock to be so transferred on its books shall be liable to pay

such tax. No safe deposit company, bank or other institution, person or persons, holding any securities, property or assets of any nonresident decedent, shall deliver or transfer the same to any nonresident executor, administrator or representative of such decedent, until after a notice in writing of the time and place of such transfer shall have been duly given the state board of tax commissioners at least ten (10) days prior thereto, and the tax imposed by this chapter paid thereon, and every such safe deposit company, bank or other institution, person or persons, shall be liable for the payment of such tax. (Laws 1901, p. 73; Laws 1907, p. 503; 2 Rem. & Bal. Codes & Stats., p. 2086.)

**§ 1317. Statement of Character of Property and Names of Heirs.**

Sec. 9195. Upon the filing of any petition for letters of administration or for the probate of any will, it shall be the duty of the petitioner to furnish the clerk of the court with a list of the heirs, legatees or devisees of the estate, and the relationship which each bears to the decedent, together with a statement of the location, nature and probable value of the entire estate, and an estimate of the amount or value of each distributive share. The clerk of the court shall immediately forward a true copy of such list to the state board of tax commissioners, also notifying said board of the date of such filing, together with the name, and, if known, the place of residence of the deceased, the name, and, if known, the place of residence of the petitioner, and, if known, the name and place of residence of the attorney for petitioner, such list and notice to be in such form as the state board of tax commissioners may prescribe. (Laws 1901, p. 73; Laws 1905, p. 223; Laws 1907, p. 505; 2 Rem. & Bal. Codes & Stats., p. 2086.)

**§ 1318. Extension of Time for Filing Appraisement.**

Sec. 9196. Whenever by reason of the complicated nature of an estate, or by reason of the confused condition of the decedent's affairs, it is [impracticable] for the executor, administrator, trustee or beneficiary of said estate to file with the clerk of the court a full, complete and itemized inventory of the personal assets belonging to the estate, within the time required by statute for filing inventories of the estates, the court may, upon the application of such representatives or parties in interest, extend the time for the filing of the appraisement for a period not to exceed three months beyond the time fixed by law. (Laws 1901, p. 74; 2 Rem. & Bal. Codes & Stats., p. 2087.)

**§ 1319. Compromise by Tax Commissioners.**

Sec. 9197. Whenever an estate charged, or sought to be charged with the inheritance tax, is of such a nature, or is so disposed, that the liability of the estate is doubtful, or the value thereof cannot, with reasonable certainty, be ascertained under the provisions of law, the state board of tax commissioners may compromise with the beneficiaries or representatives of such estates, and compound the tax thereon; but said settlement must be approved by the superior court having jurisdiction of the estate, and after such approval, the payment of the amount of the taxes so agreed upon shall discharge the lien against the property of the estate. (Laws 1901, p. 74; Laws 1907, p. 503; 2 Rem. & Bal. Codes & Stats., p. 2087.)

**§ 1320. Powers and Duties of Tax Commissioners.**

Sec. 9198. Administrators, executors and trustees of the estates subject to the inheritance tax shall, when demanded by the state board of tax commissioners, send such board certified copies of such parts of their reports as may be demanded by it or any member thereof, and upon refusal of said parties to comply with such demand, it is the duty of the clerk of the court to furnish such copies, and the expense of making the same shall be charged against the estate as are other costs in probate. And it shall be the duty of the state board of tax commissioners to exercise general supervision of the collection of the inheritance taxes provided in this chapter, and in the discharge of such duty the state board of tax commissioners, or any member thereof, may institute and prosecute such suits or proceedings in the courts of the state as may be necessary and proper, appearing therein for such purpose; and it shall be the duty of the several county attorneys to render assistance therein when called upon by such board so to do. The said board shall keep a record in which shall be entered memoranda of all the proceedings had in each case, and shall also keep an itemized account showing the amount of such taxes collected, in detail, charging the state treasurer therewith. (Laws 1901, p. 74; Laws 1907, p. 503; 2 Rem. & Bal. Codes & Stats., p. 2087.)

**§ 1321. Exemptions of Charitable Institutions.**

Sec. 9199. All bequests and devises of property within this state when the same is for one of the following charitable purposes, namely: The relief of aged, impotent [indigent] and poor people; maintenance of the sick or maimed or the support or education of orphans or indigent children shall be exempt from the payment of any tax or sum under any inheritance tax law; and any property in this state which has been devised or bequeathed for such charitable purposes, and upon which a state inheritance tax is claimed or is owing, is hereby declared to be exempt from the payment of such tax, and the same is hereby remitted. (Laws 1905, p. 190; 2 Rem. & Bal. Codes & Stats., p. 2088.)

## CHAPTER LVIII.

### WEST VIRGINIA STATUTE.

(Code of 1906, pp. 489-499; Code Supplement of 1909, pp. 206-210.)

- § 1322. Transfers Subject to Tax.
- § 1323. Rates of Taxation in Certain Cases.
- § 1324. Rates of Taxation in Other Cases.
- § 1325. Exemptions from Tax.
- § 1326. Determination of Market Value of Property.
- § 1327. Bequests to Executor in Payment of Debt or in Lieu of Compensation.
- § 1328. Estates for Years or for Life—Remainder and Contingent Interests.
- § 1329. Situs of Personal Property.
- § 1330. Lien of Tax.
- § 1331. Suspension of Payment of Tax.
- § 1332. Interest on Tax.
- § 1333. Payment of Tax.
- § 1334. Transfer of Stocks or Securities by Foreign Executor.
- § 1335. Duty of County Clerk or Court to Report Transfers.
- § 1336. Statement by Executor of Transfers Subject to Tax.
- § 1337. Ascertainment by Tax Commissioner of Taxable Transfers—Certificates.
- § 1338. Failure to Report Transfers to Tax Commissioner—Proceedings.
- § 1339. Recording Certificates of Tax Commissioner.
- § 1340. Assessment of Tax by Commissioner.
- § 1341. Payment of Tax into Treasury—Certificate of Payment.
- § 1342. Enforcement of Tax.
- § 1343. Appeals from Assessment.
- § 1344. Fees of Clerk of County Court.
- § 1345. Account of Fiduciaries not Allowed Without Certificate of Tax Commissioner.
- § 1346. Compromise by Tax Commissioner.
- § 1347. Liability of Fiduciaries and Sureties.
- § 1348. Penalty for Failure to Discharge Duties.
- § 1349. Inspection of Books by Tax Commissioner.
- § 1322. Transfers Subject to Tax.

Sec. 1. A tax, payable into the treasury of the state, shall be imposed upon the transfer, in trust or otherwise, of any property, or interest therein, real[,] personal or mixed, if such transfer be:

(a) By will or by the laws of this state regulating descents and distributions, from any person who is a resident of the state at the time of his death and who shall die seised or possessed of the property.

(b) By will or by laws regulating descents and distributions, of property within the state, or within its jurisdiction, and the decedent was a non-resident of the state at the time of his death.

(c) By a resident, or be of property within the state, or within its jurisdiction, by a nonresident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor, bargainor or donor, or intended to take effect in possession or enjoyment at or after such death.

(d) If any person shall transfer any property which he owns or shall cause any property, to which he is absolutely entitled, to be transferred to, or vested in, himself and any other person jointly, so that the title therein, or in some part thereof, vests no survivorship in such other person, a transfer shall be deemed to occur and to be taxable under the provisions of this act upon the vesting of such title.

(e) Whenever a person shall exercise by will a power of appointment derived from any disposition of property, such appointment, when made, shall be deemed a transfer taxable under the provision hereof. (Code 1906, p. 489; Code Supp. 1909, p. 207.)

#### § 1323. Rates of Taxation in Certain Cases.

Sec. 2. When the property or any beneficial interest therein passes by any such transfer where the amount of the property shall exceed in value the exemption hereinafter specified, and shall not exceed in value twenty-five thousand dollars, the tax hereby imposed shall be:

(a) Where the person or persons entitled to any beneficial interest in such property shall be the wife, husband, child, lineal descendant or lineal ancestor of the decedent, at the rate of one per centum of the market value of such interest in such property.

(b) Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the decedent (and term brother or sister shall not include a brother or sister of the half blood), at the rate of three per centum of the market value of such interest in such property.

(c) Where the person or persons entitled to any beneficial interest in such property shall be further removed in relationship from the decedent than wife, husband, child, lineal descendant, lineal ancestor, brother or sister, at the rate of five per centum of the market value of such interest in such property. (Code 1906, p. 490; Code Supp. 1909, p. 208.)

#### § 1324. Rates of Taxation in Other Cases.

Sec. 2a. The foregoing rates in section two are for convenience termed the primary rate. When the amount of the market value of such property or interest exceeds twenty-five thousand dollars, the rate upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars up to fifty thousand dollars one and one-half times the primary rates.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, two times the primary rates.

(c) Upon all in excess of one hundred thousand dollars and up to five hundred thousand dollars, two and one-half times the primary rates.

(d) Upon all in excess of five hundred thousand dollars, three times the primary rates. (Code Supp. 1909, p. 208.)

**§ 1325. Exemptions from Tax.**

Sec. 2b. The following exemptions from the tax are hereby allowed:

(a) All property transferred to a person or corporation in trust or use solely for education, literary, scientific, religious or charitable purposes, or to the state or any county or municipal corporation thereof for public purposes; provided the property so transferred is used for the purposes herein mentioned in this state, shall be exempt.

(b) Property of the market value of fifteen thousand dollars transferred to the widow of the decedent, and ten thousand dollars transferred to each of the other persons described in subdivision (a) of section two shall be exempt. (Code Supp. 1909, p. 209.)

**§ 1326. Determination of Market Value of Property.**

Sec. 3. The market value of property is its actual market value after deducting debts and encumbrances for which the same is liable, and to the payment of which it shall actually be subjected. In fixing such market value, allowances shall not be made for debts incurred by the decedent, or encumbrances made by him, unless such debts or encumbrances were incurred or created in good faith for an adequate consideration, nor for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement from any other estate or person cannot be obtained. (Code 1906, p. 490.)

**§ 1327. Bequests to Executor in Payment of Debt or in Lieu of Compensation.**

Sec. 4. Every devise or bequest ostensibly in payment of a debt of the testator shall be taxable upon the excess in value of the property devised or bequeathed, otherwise liable to such tax, over and above the true amount of such debt. Every devise or bequest to an executor or trustee, purporting to be in compensation for services, shall be taxable upon so much of the value of the property devised or bequeathed, otherwise liable to such tax, as is in excess of a reasonable compensation for such services. (Code 1906, p. 491.)

**§ 1328. Estates for Years or for Life—Remainder and Contingent Interests.**

Sec. 5. Whenever the transfer of any property shall be subject to tax hereunder and only a life estate, or an interest for a term of years, or a contingent interest to be transferred to one person and the remainder or reversionary interest to another, the state tax commissioner on the application of any person in interest, or upon his own motion, may, after due notice to the persons interested, apportion such taxes among such persons and assess to each of them his proper share of such taxes, and shall make his certificates accordingly, which shall be forwarded and disposed of in the same manner as other certificates by him herein provided for. The portion of any such taxes apportioned to any person entitled in remainder or reversion shall be payable at once, and such person shall be required to pay them in the same manner, and within the same time, as if his interest had vested in possession. (Code 1906, p. 491.)

**§ 1329. Situs of Personal Property.**

Sec. 6. A transfer of personal property of a resident of the state which is not therein or within the jurisdiction thereof, at the time of his death, shall not be taxable, under the provisions of this act if such transfer or the property be legally subject in another state or country to a tax of a like character and amount to that hereby imposed, and if such tax be actually paid or guaranteed or secured, in accordance with law in such other state or country; if legally subject in another state or country to a tax of like character, but of less amount than that hereby imposed, and such tax be actually paid, or guaranteed or secured, as aforesaid, the transfer of such property shall be taxable under this act to the extent of the difference between the tax thus actually paid, guaranteed or secured, and the amount for which such transfer would otherwise be liable hereunder, or within the jurisdiction thereof. •

The provisions of this act shall apply to the following property belonging to deceased persons, nonresidents of this state, which shall pass by will or inheritance under the law of any other state or country, and such property shall be subject to the tax prescribed in this section:

All real estate and tangible personal property, including money on deposit within this state; all intangible personal property, including bonds, securities, shares of stock and choses in action the evidence of ownership to which shall be actually within this state; shares of the capital stock or bonds of all corporations organized and existing under the laws of this state, the certificate of which stocks or bonds shall be within this state, where the laws of the state or country where such decedent resides, shall, at the time of his death impose a succession, inheritance, transfer, or similar tax upon the shares of the capital stock or bond of all corporations organized or existing under the laws of such state or country, held under such conditions at their decease by residents of this state. (Code 1906, p. 491; Code Supp. 1909, p. 209.)

**§ 1330. Lien of Tax.**

Sec. 7. All such taxes upon any transfer, and the interest that may accrue on such transfer shall, until paid, be and remain a charge and lien upon the property transferred, superior to any lien created after such transfer, and no title shall vest or be transferred as to any such property, except subject to the lien for such taxes, and no such property shall be paid, transferred or delivered, in whole or in part, until the payment into the treasury of the state of the amount of such tax as by the certificate of the state tax commissioner may be shown to have been assessed, as hereinafter provided. The person to whom the property is transferred, if he shall receive the same before the tax thereon is paid, and the executors, administrators and trustees having charge of every estate so transferred, shall be personally liable for such tax and interest until its payment, and no statute of limitations shall be a defense to an action for the recovery thereof. (Code 1906, p. 492.)



**§ 1331. Suspension of Payment of Tax.**

Sec. 8. Whenever it shall be necessary in the settlement of any estate to retain property or funds for the purpose of paying any liability, the amount or validity of which is not determined, the payment of the whole or a proportionate part of the tax may be suspended to await the disposition of such claim. (Code 1906, p. 492.)

**§ 1332. Interest on Tax.**

Sec. 9. In the case of such a suspension the tax shall be payable when the time of the suspension expires. In all other cases the tax shall be payable as soon as the amount thereof is assessed by the state tax commissioner, as herein provided. Interest shall be charged and collected upon all taxes imposed by this act from the time when the same become payable, at the rate of four per cent per annum. (Code 1906, p. 492.)

**§ 1333. Payment of Tax.**

Sec. 10. Every executor, administrator, trustee, guardian, committee or other fiduciary having charge of an estate, any part of which is subject to such tax, and every person to whom the property is transferred which is subject to such tax, but is not in charge of any such fiduciary, shall pay the same upon the market value of all the property subject to tax, whether there are or are not devises or bequests of successive interests in the same property, and whether such successive interests, if any, are defeasible or indefeasible, absolute or contingent. Such payment shall be made out of said estate in the same manner as other debts may be paid. Any such fiduciary may sell personal property for that purpose when necessary, and the circuit court may authorize him to sell real estate for the payment thereof in the same manner as it may authorize the sale of real estate for the payment of debts. (Code 1906, p. 493.)

**§ 1334. Transfer of Stocks or Securities by Foreign Executor.**

Sec. 11. Whenever any foreign executor, administrator or trustee shall assign or transfer in this state any stock, bond or other security liable to any such tax, standing in the name of, or in trust for a decedent, he shall have the tax assessed on such transfer by the state tax commissioner, and shall pay the tax into the state treasury on the transfer thereof; otherwise any person having authority to make or permit such transfer, who shall make or permit it, shall be liable to pay the tax if he then had knowledge, or reasonable cause to believe, that the property was liable to tax. (Code 1906, p. 493.)

**§ 1335. Duty of County Clerk or Court to Report Transfers.**

Sec. 12. Whenever the county court or any county, or the clerk thereof, shall have reason to believe that a transfer subject to taxation hereunder has been made, whether such belief be based on any application for the probate of a will, the appointment of any fiduciary, or the admission to record of a deed or other writing intended to take effect in possession or enjoyment, at or after the death of the maker thereof, or appearing to be

in contemplation of his death, or be based on any information otherwise derived, such clerk shall report the same to the state tax commissioner. Such a report shall be made quarterly as soon as possible after the first day of January, April, July and October in each year, and shall relate to all such matters as were not covered by any previous reports. A special report may be made by the clerk at any time. If there be no reason to believe that any such transfer has been made since the date of the last preceding report, that fact shall be stated in such quarterly report, but if there be reason to believe that such a transfer has been made, such quarterly or special report shall show the nature thereof; the name of the decedent, deviser, grantor, vendor, bargainor or donor; the name or other description, and the address of the person or corporation to or for whose use or benefit any property may be transferred, and the relationship, if any, between such person and the person from whom the property is transferred, as far as the court or clerk may have any information respecting such matters; the nature of the property transferred, with such general description and approximate valuation as the court or clerk may be able to give. Any other person, whether interested in such property or not, may make a like report to the state tax commissioner. Every such report, whether by the clerk or by any other person, shall be filed by the commissioner, and retained in his office until the tax be paid on the transfers therein mentioned, or it shall be ascertained that they are not subject to tax, and shall then be destroyed; and at all times such report shall be confidential and privileged, and its contents shall not be inspected or made known by anyone, except by the state tax commissioner as to any report made by a clerk, when there shall be a question whether such clerk has complied with the provisions of this chapter. (Code 1906, p. 493.)

**§ 1336. Statement by Executor of Transfers Subject to Tax.**

Sec. 13. With the inventory of every estate the executor, administrator or trustee shall file a statement showing, to the best of his judgment, whether any transfer of any property mentioned in such inventory is taxable hereunder, and if any be so taxable, setting forth the same matters mentioned in the preceding section, with as much accuracy as possible; and if the estate be one, no inventory of which is required to be filed, such statement shall nevertheless be filed in the same office, and within the same time, in which an inventory is in other cases required to be filed. (Code 1906, p. 494.)

**§ 1337. Ascertainment by Tax Commissioner of Taxable Transfers—Certificates.**

Sec. 14. The state tax commissioner shall as soon as may be, from the statements and reports made by the clerk and the personal representative or trustee or other person as aforesaid, from the inventory of the estate, if there be one, and from such other information as he may be able to procure, ascertain whether any transfer of any property be subject to a tax under the provisions of this chapter, and, if it be subject to tax, shall ascertain and assess the amount of the tax to which it is subject. If in his

opinion no transfer or any part of such property is taxable hereunder, he shall certify that fact in writing, made in duplicate. One of said certificates shall be forwarded by him to the clerk of the county court, who is required to make report under section twelve hereof, and the other certificate shall be forwarded to the administrator, executor or trustee having such property in charge, or to the grantee, vendee, bargainee or donee thereof. If in his opinion the transfer of any of the property so transferred is taxable under the provisions of this act, he shall in like manner certify a description of the property, or of the part thereof so liable, and of the amount of tax with which it is assessed, and shall make duplicate certificates showing those facts, one of which he shall forward to the said clerk and one to such administrator, trustee, grantee, vendee, bargainee or donee. (Code 1906, p. 494.)

**§ 1338. Failure to Report Transfers to Tax Commissioner—Proceedings.**

Sec. 15. If any transfer be not reported to the state tax commissioner by the clerk of the county court or the executor, administrator, trustee, grantee, vendee, bargainee or donee, or other person, the said tax commissioner may proceed, upon such information as he can obtain, to inquire and determine whether any such transfer is subject to tax under this act, and what tax, if any, should be assessed and shall proceed as to any such transfer and the property passing thereby, in all respects, as if the same had been reported to him as required by this chapter. (Code 1906, p. 495.)

**§ 1339. Recording Certificates of Tax Commissioner.**

Sec. 16. The executor, administrator, trustee, devisee, vendee, grantee, bargainee or donee shall cause the certificate, so received from the state tax commissioner, to be recorded by the clerk of the county court. Such certificate shall be recorded in the book wherein inventories and accounts of fiduciaries are recorded; but it shall be in compliance with this section if such a certificate be laid before a commissioner of accounts of said court at the first settlement thereafter of the accounts of any fiduciary, and be made a part of the report of such commissioner of accounts and be recorded with it. (Code 1906, p. 495.)

**§ 1340. Assessment of Tax by Commissioner.**

Sec. 17. Notwithstanding any such certificates may have been made and recorded, if it afterward appear to the state tax commissioner that the transfer of the property mentioned in such certificate, or any part thereof, is subject to any tax and in addition to that mentioned in such certificate, or that it is taxable in a case where such certificate showed that it was not liable to such tax, he shall assess the proper tax thereon in addition to any tax which may have been theretofore assessed, and shall forthwith certify the amount of the same in duplicate, and forward one of such certificates to each of the persons to whom his original certificate was required to be forwarded. The certificate, so forwarded to the clerk of the county court, shall by him be forthwith recorded in the book in which deeds of trust and mortgages are recorded, and from the time of its admis-

sion to record shall constitute a lien on the property on which tax is assessed, for the amount of such taxes, and any interest accruing thereon, until the same are paid, except as against purchasers for value before such admission to record, without notice of such additional liability and as against those who may claim under such purchaser, having purchased for valuable consideration without notice of such liability. (Code 1906, p. 495.)

**§ 1341. Payment of Tax into Treasury—Certificate of Payment.**

Sec. 18. As soon as the amount of any tax upon any transfer shall be certified by the state tax commissioner, the person liable for such tax shall pay the amount thereof to the credit of the treasury of West Virginia, in the manner provided for the payment of other moneys into such treasury, except that the certificate of the bank in which the same may be deposited shall be in duplicate, and shall describe the property upon the transfer of which the tax is assessed, and that one of such duplicate certificates of deposit shall be forwarded to the state tax commissioner. The said state tax commissioner shall at once certify, in duplicate, that all the taxes upon such transfer under the provisions of this act have been paid, and shall forward such certificates, one to the person making the payment and the other to the clerk of the county court, who shall record the same in the book in which releases are recorded. From the date when any such certificate of payment, or any such certificate that the property is not liable to such taxes, is admitted to record, the property mentioned in such certificate shall be free from any lien or claim for any such taxes, except as provided in the preceding section. (Code 1906, p. 496.)

**§ 1342. Enforcement of Tax.**

Sec. 19. If any such taxes, hereinbefore provided for, shall not be paid within sixty days from the time they become payable, or if there be an appeal with respect to the same or payment thereof be prevented by litigation or other unavoidable cause, within sixty days after the decision of such appeal or the end of such litigation or other cause of delay, the state tax commissioner shall on behalf of the state, and with the assistance of the prosecuting attorney of the county, proceed in the circuit court, by appropriate proceedings, to enforce the lien of such taxes upon any property subject to such lien, and to obtain the sale thereof, or of so much thereof as may be necessary to satisfy such lien, and relief shall be given by such circuit court accordingly. In addition to any other remedy for the collection of any tax upon such transfer, the same may be recovered in an action of assumpsit on behalf of the state of West Virginia against any person liable for such tax, and the state tax commissioner is authorized to bring such action in any circuit court or before any justice having jurisdiction, and the prosecuting attorney shall assist in the prosecution thereof. The state tax commissioner may compromise and settle the amount of any such tax when there is a controversy as to the relationship between the former owner of the property and the person to whom it is transferred. (Code 1906, p. 496.)

**§ 1343. Appeals from Assessment.**

Sec. 20. Within thirty days after the state tax commissioner shall have forwarded a certificate of the amount of tax assessed upon the transfer of any property, any person interested in such transfer, or in such property, may apply to the circuit court of any county, in which such property or the greater part thereof may be, for an appeal from the assessment so made. Such application shall be by petition in writing, stating the names and addresses of all persons interested, showing the grounds upon which the appellant claims to be aggrieved, and an appeal shall be allowed thereon forthwith; and, until the same shall have been heard and decided, proceedings for the collection of such taxes may be stayed by order of said court for good cause shown, and upon such conditions as it may direct. Such appeal shall have precedence over other civil cases, except those relating to taxes claimed by the state, and shall be heard and decided as soon as may be. Before any such hearing reasonable notice thereof shall be given to all other persons interested, and the state tax commissioner and prosecuting attorney, who, with the said commissioner, shall defend the interests of the state. Upon such hearing the court shall consider all certificates relating to such taxes, and all other pertinent evidence that may be offered by either party. If it be of the opinion that the assessment appealed from was correct, it shall affirm the same; if it be of the opinion that the transfer was not subject to any such taxes, it shall set aside the said assessment and enter an order exonerating the property from taxes. If it be of the opinion that the transfer was subject to such taxation, but that the amount of taxes assessed was erroneous, it shall correct the assessment thereof by increasing or decreasing the amount thereof, as it may think just, and shall enter judgment accordingly. A copy of the judgment upon any such appeal shall be certified in duplicate, and forwarded and recorded as is herein provided with respect to the certificate of the state tax commissioner. (Code 1906, p. 497.)

**§ 1344. Fees of Clerk of County Court.**

Sec. 21. For his services in recording such certificate or copy of judgment, the clerk of the county court shall be entitled to a fee of fifty cents, to be taxed to and be paid by the person to whom such property shall be transferred. (Code 1906, p. 497.)

**§ 1345. Account of Fiduciaries not Allowed Without Certificate of Tax Commissioner.**

Sec. 22. In the settlement of his accounts any fiduciary making payment of the amount assessed upon any such transfer, as shown by any such certificate or judgment, may have credit for such payment upon filing the certificate of the state tax commissioner that such taxes have been paid, but no final settlement shall be made of the account of any fiduciary liable for such taxes until he shall have filed such certificate of payment. (Code 1906, p. 498.)

**§ 1346. Compromise by Tax Commissioner.**

Sec. 23. The state tax commissioner may compromise and settle the amount of such taxes whenever controversy may arise as to the ownership between the former owner of the property and the person to whom the same may have passed. (Code 1906, p. 498.)

**§ 1347. Liability of Fiduciaries and Sureties.**

Sec. 24. Every fiduciary, and the sureties on his bond, shall be liable upon such bond for all moneys such fiduciary may receive for taxes under this chapter, and for the proceeds of all sales of real estate received by him under the provisions hereof; and if any such fiduciary fail to perform any of the duties imposed on him by this chapter, he and his sureties shall be liable upon his bond for any damages resulting from such failure, the court under whose order he qualified may revoke his authority, and he and his sureties shall be liable to the same proceedings as if his authority had been revoked for any other cause. (Code 1906, p. 498.)

**§ 1348. Penalty for Failure to Discharge Duties.**

Sec. 25. Any clerk or other person failing to discharge any duty imposed upon him by this act shall be guilty of a misdemeanor, and be fined, in the discretion of the court, not less than ten nor more than five hundred dollars. (Code 1906, p. 498.)

**§ 1349. Inspection of Books by Tax Commissioner.**

Sec. 26. Every person having in his possession or control any book or paper containing any information respecting property transferred, as aforesaid, shall at the request of the state tax commissioner exhibit the same to him or to the prosecuting attorney of the county, and any person in interest shall make written answer under oath to any questions which the said state tax commissioner may put in writing concerning such property. Any person failing to comply with the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be, in the discretion of the court, fined not less than ten nor more than five hundred dollars. (Code 1906, p. 498.)

## CHAPTER LIX.

### WISCONSIN STATUTE.

*(Laws of 1903, pp. 65-81; Laws of 1905, p. 162; Laws of 1907, pp. 52, 585; Laws of 1909, pp. 635-647; Laws of 1911, pp. 524, 644.)*

- § 1350. Transfers Subject to Tax—Value of Property.
- § 1351. Primary Rates of Taxation.
- § 1352. Other Rates of Taxation.
- § 1353. Exemptions from Tax.
- § 1354. Lien of Tax—Payment to Treasurer—Receipts—Time for Payment.
- § 1355. Interest and Discount.
- § 1356. Collection of Tax by Executor—Sale of Property.
- § 1357. Refund of Tax in Certain Cases.
- § 1358. Bond to Pay Tax When Person Comes into Possession or Enjoyment.
- § 1359. Bequest to Executor in Lieu of Compensation.
- § 1360. Transfer or Delivery of Stocks, Securities and Deposits—Notice.
- § 1361. Jurisdiction of County Court—Estates of Nonresidents—Fees of County.
- § 1362. Appraisers and Appraisement—Contingent and Expectant Estates.
- § 1363. Notice of Appraisement—Witnesses—Report—Compensation.
- § 1364. Report of Special Appraiser—Proceedings Thereon—Computation of Tax—Reappraisement.
- § 1365. Enforcement of Unpaid Taxes.
- § 1366. Duties of Public Administrator.
- § 1367. Repealed.
- § 1368. Report of County Treasurer.
- § 1369. Retention of Funds by Treasurer for Use of County.
- § 1370. Compromise of Taxes in Certain Cases.
- § 1371. Receipts for Payment of Tax.
- § 1372. Payment to State Treasurer.
- § 1373. Definition of Terms.
- § 1374. Compromise of Taxes Accruing Prior to This Act.

#### § 1350. Transfers Subject to Tax—Value of Property.

Sec. 1. A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association or corporation, except county, town or municipal corporations within the state, for strictly county, town or municipal purposes, and corporations of this state organized under its laws solely for religious, charitable or educational purposes, which shall use the property so transferred exclusively for the purposes of their organization within the state, in the following cases:

When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state.

When a transfer is by will or intestate law, of property within the state or within its jurisdiction and the decedent was a nonresident of the state at the time of his death.

When the transfer is of property made by a resident or by a nonresident when such nonresident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

Such tax shall be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy to any property or the income thereof, by any such transfer whether made before or after the passage of this act, provided that property or estates which have vested in such persons or corporations before this act takes effect shall not be subject to the tax.

Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

The tax so imposed shall be upon the clear market value of such property at the rates hereinafter prescribed and only upon the excess of the exemptions hereinafter granted. (Laws 1903, p. 65; Laws 1905, p. 162.)

#### § 1351. Primary Rates of Taxation.

Sec. 2. When the property or any beneficial interest therein passes by any such transfer where the amount of the property shall exceed in value the exemption hereinafter specified, and shall not exceed in value twenty-five thousand dollars the tax hereby imposed shall be:

Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal issue, lineal ancestor of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per centum of the clear value of such interest in such property.

Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife or widow of a son, or the husband of a daughter of the



decedent, at the rate of one and one-half per centum of the clear value of such interest in such property.

Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother or a descendant of a brother or sister of the father or mother of the decedent, at the rate of three per centum of the clear value of such interest in such property.

Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother or a descendant of the brother or sister of the grandfather or grandmother of the decedent, at the rate of four per centum of the clear value of such interest in such property.

Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear value of such interest in such property. (Laws 1903, p. 66.)

#### § 1352. Other Rates of Taxation.

Sec. 3. The foregoing rates in section two are for convenience termed the primary rates.

When the amount of the clear value of such property or interest exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, one and one-half times the primary rates.

Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, two times the primary rates.

Upon all in excess of one hundred thousand dollars and up to five hundred thousand dollars, two and one-half the primary rates.

Upon all in excess of five hundred thousand dollars, three times the primary rates. (Laws 1903, p. 67.)

#### § 1353. Exemptions from Tax.

Sec. 4. The following exemptions from the tax, to be taken out of the first twenty-five thousand dollars, are hereby allowed:

All property transferred to municipal corporations within the state for strictly county, town, or municipal purposes, or to corporations of this state organized under its laws, solely for religious, charitable, or educational purposes, which shall use the property so transferred, exclusively for the purposes of their organization, within the state, shall be exempt. The inheritance tax laws shall not be held applicable to any transfer of property heretofore made to any county, town, or municipal corporation within the state for strictly municipal purposes.

Property of the clear value of ten thousand dollars transferred to the widow of the decedent, and two thousand dollars transferred to each of the other persons described in the first subdivision of section 2 shall be exempt.

Property of the clear value of five hundred dollars transferred to each of the persons described in the second subdivision of section 2 shall be exempt.

Property of the clear value of two hundred and fifty dollars transferred to each of the persons described in third subdivision of section 2 shall be exempt.

Property of the clear value of one hundred and fifty dollars transferred to each of the persons described in the fourth subdivision of section 2 shall be exempt.

Property of the clear value of one hundred dollars transferred to each of the persons and corporations described in the fifth subdivision of section 2 shall be exempt. (Laws 1903, p. 68; Laws 1905, p. 162; Laws 1911, p. 644.)

**§ 1354. Lien of Tax—Payment to Treasurer—Receipts—Time for Payment.**

Sec. 5. Every such tax shall be and remain a lien upon the property transferred until paid and the person to whom the property is transferred and the administrators, executors, and trustees of every estate so transferred, shall be personally liable for such tax until its payment.

The tax shall be paid to the treasurer of the county in which the county court is situated having jurisdiction as herein provided; and said treasurer shall make duplicate receipts of such payment, one of which he shall immediately send to the state treasurer, whose duty it shall be to charge the county treasurer so receiving the tax, with the amount thereof, and the other receipt shall be delivered to the executor, administrator, or trustee, whereupon it shall be a proper voucher in the settlement of his accounts.

But no executor, administrator, or trustee shall be entitled to a final accounting of an estate, in settlement of which a tax is due under the provisions of this act, unless he shall produce such receipts or a certified copy thereof, or unless a bond shall have been filed as prescribed by section 9.

All taxes imposed by this act shall be due and payable at the time of the transfer, except as hereinafter provided. Taxes upon the transfer of any estate, property, or interest therein, limited, conditioned, dependent, or determinable upon the happening of any contingency or future event, by reason of which the fair market value thereof cannot be ascertained at the time of transfer, as herein provided, shall accrue and become due and payable when the beneficiary shall come into actual possession or enjoyment thereof. (Laws 1903, p. 69; Laws 1909, p. 635.)

**§ 1355. Interest and Discount.**

Sec. 6. If such tax is paid within one year from the accruing thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accruing thereof, interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued; unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax shall not be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten per centum shall be charged. In all cases when a bond shall be given under the provisions of section 9, interest shall be charged at the rate of

six per centum from the accrual of the tax, until the date of payment thereof. (Laws 1903, p. 69; Laws 1909, p. 636.)

**§ 1356. Collection of Tax by Executor—Sale of Property.**

Sec. 7. Every executor, administrator, or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator of [or] intestate. Any such administrator, executor, or trustee having in charge or in trust any legacy or property for distribution, subject to such tax, shall deduct the tax therefrom; and within thirty days therefrom shall pay over the same to the county treasurer, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof, from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this act, to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the administrator, executor, or trustee, and the tax shall remain a lien or charge on such real property until paid, and the payment thereof shall be enforced by the executor, administrator, or trustee in the same manner that payment of the legacy might be enforced, or by the district attorney under section 16. If any such legacy shall be given in money to any such person for a limited period, the administrator, executor, or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him to make an apportionment if the case require it, of the sum to be paid into the hands by such legatees, and for such further order relative thereto as the case may require. (Laws 1903, p. 70; Laws 1909, p. 636.)

**§ 1357. Refund of Tax in Certain Cases.**

Sec. 8. If any debt shall be proved against the estate of the decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted, or upon which it has been paid by the person entitled to such legacy or distributive share and such person is required by the order of the county court having jurisdiction thereof on notice to the state treasurer to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to such person by the executor, administrator, trustee, or officer to whom said tax has been paid.

When any amount of said tax shall have been paid erroneously into the state treasury, it shall be lawful for the state treasurer upon receiving a transcript from the county court record showing the facts to refund the amount of such erroneous or illegal payment to the executor, administrator, trustee, person, or persons who have paid any such tax in error, from the treasury; or the said state treasurer may order, direct, and allow the treasurer of any county to refund the amount of any illegal or erroneous payment of such tax out of the funds in his hands or custody to the credit of such taxes, and credit him with the same in his quarterly account rendered to the state treasurer under this act. Provided, however, that all applications for such re-

funding of erroneous taxes shall be made within one year from the payment thereof, or within one year after the reversal or modification of the order fixing such tax. (Laws 1903, p. 70; Laws 1909, p. 637.)

**§ 1358. Bond to Pay Tax When Person Comes into Possession or Enjoyment.**

Sec. 9. Any beneficiary of any property chargeable with a tax under this act, and any executors, administrators and trustees thereof, may elect, within eighteen months from the date of the transfer thereof as herein provided, not to pay such tax until the person or persons beneficially interested therein shall come into the actual possession or enjoyment thereof. The person or persons so electing shall give a bond to the state in a penalty of three times the amount of any such tax, with such sureties as the county court of the proper county may approve, conditioned for the payment of such tax and interest thereon, at such time or period as the person or persons beneficially interested therein may come into the actual possession or enjoyment of such property, which bond shall be filed in the county court. Such bond must be executed and filed and a full return of such property upon oath made to the county court within one year from the date of such transfer thereof as herein provided, and such bond must be renewed every five years. (Laws 1903, p. 71.)

**§ 1359. Bequest to Executor in Lieu of Compensation.**

Sec. 10. If a testator bequeaths property to one or more executors or trustees in lieu of their commissions or allowances, or makes them his legatees to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed, above the amount of commissions or allowances prescribed by law in similar cases, shall be taxable by this act. (Laws 1903, p. 71.)

**§ 1360. Transfer or Delivery of Stocks, Securities and Deposits—Notice.**

Sec. 11. If a foreign executor, administrator, or trustee shall assign or transfer any stock or obligations in this state, standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county or the state treasurer on the transfer thereof.

No safe deposit company, bank, or other institution, person or persons, holding securities or assets of a nonresident decedent, nor any foreign or domestic corporation doing business within this state in which a nonresident decedent held stock at his decease, shall deliver or transfer the same to the executors, administrators, or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the attorney general at least ten days prior to the said transfer; nor shall any such safe deposit company, bank, or other institution, person or persons, nor any such foreign or domestic corporation, deliver or transfer any securities or assets of the estate of a nonresident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such

securities or assets under the provisions of the inheritance tax laws, without an order from the proper court authorizing such transfer; and it shall be lawful for the attorney general or public administrator personally or by representative, to examine said securities or assets at any time before such delivery or transfer. Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax as herein provided, shall render said safe deposit company, trust company, bank, or other institution, person or persons, or such foreign or domestic corporation, liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of the inheritance tax laws. (Laws 1903, p. 72; Laws 1909, p. 638; Laws 1911, p. 644.)

**§ 1361. Jurisdiction of County Court—Estates of Nonresidents—Fees of County.**

Sec. 12. The county court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under the inheritance tax laws, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of the inheritance tax laws and to do any act in relation thereto authorized by law to be done by a county court in other matters or proceedings coming within its jurisdiction; and if two or more county courts shall be entitled to exercise any such jurisdiction, the county court first acquiring jurisdiction hereunder, shall retain the same to the exclusion of every other county court.

Every petition for ancillary letters testamentary or of administration shall include the public administrator as a person to be notified, and a true and correct statement of all the decedent's property in this state with the value thereof; upon presentation thereof, the county court shall cause the order for hearing to be served personally upon the public administrator; and upon the hearing, the county court shall determine the amount of the inheritance tax which may be or become due, and the decree awarding the letters may contain provisions for the payment of such tax or the giving of security therefor.

The county court and the judge thereof at the seat of government shall have jurisdiction to hear and determine, as other matters not appertaining to its regular probate business, all questions relating to the determination and adjustment of inheritance taxes in the estates of nonresident decedents in which it does not otherwise appear necessary for regular administration to be had therein. And in such estates the public administrator may be appointed as special administrator for the purposes of such adjustment. The county treasurer shall retain for the use of the county out of all such taxes paid and accounted for, only one per cent, and the balance, less the statutory expenses of collection and adjustment as fixed by the court, shall be paid into the state treasury; provided, however, that the minimum fee to which the county shall be entitled shall be five dollars in each case and that in no case shall the maximum fee exceed five hundred dollars. (Laws 1903, p. 72; Laws 1909, p. 638; Laws 1911, p. 645.)

**§ 1362. Appraisers and Appraisement—Contingent and Expectant Estates.**

Sec. 13. The county court upon the application of any interested party, including the attorney general and public administrator or upon its own motion, shall as often as, and whenever occasion may require appoint a competent person as special appraiser to fix the fair market value at the time of the transfer thereof of the property of persons whose estate shall be subject to the payment of any tax imposed by this act.

Whenever a transfer of property is made upon which there is, or in any contingency there may be, a tax imposed, such property shall be appraised at its clear market value immediately upon the transfer or as soon thereafter as practicable. The value of every future or limited estate, income, interest, or annuity dependent upon any life or lives in being, shall be determined by the rule, method, and standard of mortality and value employed by the commissioner of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies except that the rate of interest for making such computation shall be five per centum per annum.

In estimating the value of any estate or interest in property to the beneficial enjoyment of possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made in respect of any contingent encumbrance thereon, nor in respect of any contingency upon the happening of which the estate or property or some part thereof, or interest therein, might be abridged, defeated, or diminished; provided, however, that in the event of such encumbrance taking effect as an actual burden upon the interest of the beneficiary or in the event of the abridgment, defeat, or diminution of such estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax in respect of the amount or value of the encumbrance when taking effect or so much as will reduce the same to the amount which would have been assessed in respect of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided in section 8.

Where any property shall after the passage of this act be transferred subject to any charge, estate, or interest determinable by the death of any person or at any period ascertainable only by reference to death, the increase of benefit accruing to any person or corporation upon the extinction or determination of such charge, estate or interest shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase of benefit from the person from whom the title to their respective estates or interests is derived.

When property is transferred in trust or otherwise, and the rights, interests, or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon such transfer at the lowest rate which on the happening of any of the said contingencies or conditions would be possible under the provisions of this act, and such tax so imposed shall be due and payable forthwith out of the property transferred; provided, however, that on the happening of any contingency or condition whereby the said property

or any part thereof is transferred to a person or corporation, which under the provisions of this act is required to pay a tax at a higher rate than the tax imposed, then such transferee shall pay the difference between the tax imposed and the tax at the higher rate, and the amount of such increased tax shall be enforced and collected as provided in this act.

Estates in expectancy which are contingent or defeasible and in which proceedings for determination of the tax have not been taken or where the taxation thereof has been held in abeyance shall be appraised at their full undiminished clear value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation upon which said estates in expectancy may have been limited. Where an estate for life or for years can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of such divesting. (Laws 1903, p. 73; Laws 1909, p. 639.)

**§ 1363. Notice of Appraisement—Witnesses—Report—Compensation.**

Sec. 14. Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the public administrator and to such persons as the county court may by order direct, of the time and place when he will appraise such property. He shall, at such time and place, appraise the same at its fair market value, as herein prescribed, and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing, to the said county court, together with the depositions of the witnesses examined, and such other facts in relation thereto and to the said matter as the said county court may order or require. Every appraiser shall be paid on the certificate of the county court at the rate of three dollars per day for every day actually and necessarily employed in such appraisal, and his actual and necessary traveling expenses and the fees paid such witnesses, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record, by the county treasurer out of any funds he may have in his hands on account of any tax imposed under the provisions of this act. (Laws 1903, p. 75; Laws 1909, p. 641.)

**§ 1364. Report of Special Appraiser—Proceedings Thereon—Computation of Tax—Reappraisement.**

Sec. 15. The report of the special appraiser shall be made in duplicate, one of which duplicates shall be filed in the office of the county court and the other in the office of the attorney general. Upon filing such report, the county court shall forthwith give twenty days' notice by mail to all persons known to be interested in the estate, including the attorney general and public administrator of the time and place for the hearing in the matter of such report, and the county court, from such report and other proofs relating to any such estate, shall forthwith at the time so fixed, determine the cash value of such estate and the amount of tax to which the same is liable.

Or the county court without appointing such appraiser upon giving twenty days' notice by mail to all persons known to be interested in the estate, including the attorney general and public administrator of the time and place of hearing, may at the time so fixed hear evidence and determine the cash value of such estate and the amount of the tax to which the same is liable. If the residence or postoffice address of any person interested in any estate is unknown to the executor, administrator, or trustee, notice of the hearing in the matter of the report of the appraiser or notice that the county court without appointing such appraiser will determine the cash value of an estate, shall be given to all such persons by publication of such notice not less than three successive weeks prior to the time fixed for such hearing or determination in such newspaper published within the county as the court shall direct.

If the county court without appointing such special appraiser decide to hear evidence as to the cash value of the estate for inheritance tax purposes, the court may, at the time of the appointment of the regular appraisers of the estate, on its own motion, designate an additional third appraiser to represent the county and state, and such additional appraiser shall report the inventory and appraisal of said property with the other appraisers; or, in case of failure to agree, in a separate report, and be entitled to compensation of three dollars per day for each day necessarily employed in such appraisal and his mileage, which fees shall be paid on the certificate of the county judge by the county treasurer out of any of the state's inheritance tax funds he may have in his possession.

The commissioner of insurance shall on application of any county court determine the value of any such future or contingent estates, income, or interests therein, limited, contingent, dependent, or determinable upon the life or lives of the person or persons in being upon the facts contained in such special appraiser's report or upon the facts contained in the county court's finding and determination and certify the same to the county court, and his certificate shall be presumptive evidence that the method of computation adopted therein is correct.

Upon the determination by the county court as to the value of any estate which is taxable under the inheritance tax laws and of the tax to which it is liable, notice shall be given to all persons known to be interested, including the county treasurer and the state treasurer by delivering personally or mailing to each a copy of the order of determination. Such order shall include a statement of (1) the date of the death of the decedent, (2) the net value of the real and personal property to be transferred, (3) the proportions and amounts of all such property of such decedent, (4) the names and relationship of the persons entitled to receive the same, (5) the rates and amounts of inheritance tax to which each of such amounts and proportions are liable, (6) the total amount of tax to be paid, and (7) a statement as to penalty for delay, if any, and shall be substantially in the form to be prescribed and furnished to county courts by the attorney general. And no final judgment shall be entered in such estates until due proof is filed with the court showing that a copy of such order has been delivered or mailed to the state treasurer.



If, however, it appears at this or any stage of the proceedings that any of such parties known to be interested in the estate is an infant or an incompetent, who is not already represented by a guardian ad litem, the county court shall if the interest of such infant or incompetent is presently involved and is adverse to that of the other persons interested therein appoint a guardian ad litem for such infant, but nothing in this provision shall effect the right of an infant over fourteen years of age or of anyone on behalf of an infant under fourteen years of age to nominate, and apply for the appointment of a guardian ad litem of such infant at any stage of the proceedings.

The attorney general or any person dissatisfied with the appraisement or assessment and determination of such tax may apply for a rehearing thereof before the county court within sixty days from the fixing, assessing, and determination of the tax by the county court as herein provided on filing a written notice which shall state the grounds of the application for a rehearing. The rehearing shall be upon the records, proceedings, and proof had and taken on the hearings as herein provided and a new trial shall not be had or granted unless specially ordered by the county court.

Within two years after the entry of an order or decree of the county court determining the value of an estate and assessing the tax thereon, the attorney general, may, if he believes that such appraisal, assessment, or determination has been fraudulently, collusively, or erroneously made, make application to the circuit judge of the judicial circuit in which the former owner of such estate resided for a reappraisal thereof. The circuit judge to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers, be subject to the duties, shall give the notice and receive the compensation provided by sections 13 and 14. Such compensation shall be payable by the county treasurer out of any funds he may have on account of any tax imposed under the provisions of this act upon the certificate of the circuit judge. The report of such appraiser shall be filed in the circuit court and thereafter the same proceedings shall be taken and had by and before such circuit court as herein provided to be taken and had by and before the county court. The determination and assessment of such circuit court shall supersede the determination and assessment of the county court and shall be filed in the office of the state treasurer and a certified copy transmitted to the county court of the proper county. (Laws 1903, p. 75; Laws 1909, p. 641; Laws 1911, p. 646.)

#### § 1365. Enforcement of Unpaid Taxes.

Sec. 16. If the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act after the refusal or neglect of any person liable therefor to pay the same, he shall notify the district attorney of the county in writing of such failure or neglect and such district attorney if he have probable cause to believe that such tax is due and unpaid, shall apply to the county court for a citation citing the person liable to pay such tax to appear before the court on the day specified not more than three months from the date of such citation and show cause why the tax should not be

paid. The judge of the county court upon such application and whenever it shall appear to him that any such tax, accruing under this act, has not been paid as required by law, shall issue such citation and service of such citation and the time, manner and proof thereof, and the hearing and determination thereof, shall conform as near as may be to the provisions of the laws governing probate practice of this state, and whenever it shall appear that any such tax is due and payable and the payment thereof cannot be enforced under the provisions of this act in said county court, the person or corporation from whom the same is due is hereby made liable to the county of the county court having jurisdiction over such estate or property for the amount of such tax, and it shall be the duty of the district attorney of said county in the name of such county to sue for and enforce the collection of such tax, and it is made the duty of said district attorney to appear for and act on behalf of any county treasurer, who shall be cited to appear before any county court under the provisions of this act. (Laws 1903, p. 78.)

**§ 1366. Duties of Public Administrator.**

Sec. 17. Where no application for administration on the estate of any deceased person is made within sixty days after the demise of such person, and such estate appears to come under the provisions of the inheritance tax laws, the public administrator of the proper county shall make application for and shall be entitled to such general or special administration of such estate as may be necessary for the purpose of the adjustment and payment of the inheritance tax provided by law and shall administer the same as other estates are administered.

Where it appears that the estate of a deceased person subject to the inheritance tax laws was transferred in contemplation of the death of the grantor without the adjustment and payment of the inheritance taxes and no application for such adjustment is made within sixty days after the demise of such grantor, the public administrator of the proper county shall make application for and shall be entitled to such general or special administration as may be necessary for the purpose of the adjustment and payment of the inheritance taxes provided by law and shall administer such estate the same as other estates are administered as though such estate had not been transferred by the grantor.

It shall be the duty of the public administrator, under the general supervision of the attorney general and with the assistance of the district attorney, when required by the attorney general or county judge, to investigate the estates of deceased persons within his county and to appear for and act in behalf of the county and state in the county court in such estates as the court may in its discretion deem necessary, and for such services the public administrator shall be entitled to five per centum of the gross inheritance tax as determined in each such estate, to be paid by the county treasurer out of the inheritance tax funds upon an order of the county judge, provided that the minimum fee for each such estate shall not be less than three dollars and the maximum fee not more than twenty-five dollars.

In counties containing a population of over two hundred thousand, an assistant district attorney, compensated as otherwise provided by law, may

by order of the county court be designated to take the place of and perform all the duties of the public administrator relating to the inheritance tax laws, except as provided in subdivisions 1 and 2 of this section. Whenever the assistant district attorney is designated as public administrator he shall receive the same fees as the public administrator in other counties, provided, however, that all such fees collected by him as public administrator shall be turned into the county treasury. (Laws 1903, p. 78; Laws 1909, p. 644.)

**§ 1367. Repealed.**

Sec. 18. Repealed. (Laws 1909, p. 645.)

**§ 1368. Report of County Treasurer.**

Sec. 19. Each county treasurer shall make a report under oath, to the state treasurer, on January, April, July, and October first of each year, of all taxes received by him under this act, stating for what estate and by whom and when paid. The form of such report may be prescribed by the state treasurer. He shall at the same time pay the state treasurer all the taxes received by him under this act and not previously paid into the state treasury, and for all such taxes collected by him and not paid into the state treasury within thirty days from the times herein required, he shall pay interest at the rate of ten per centum per annum. (Laws 1903, p. 79; Laws 1909, p. 645.)

**§ 1369. Retention of Funds by Treasurer for Use of County.**

Sec. 20. The county treasurer shall retain for the use of the county, out of all taxes paid and accounted for by him each year under this act seven and one-half per cent on all sums so collected by or paid to said treasurer. (Laws 1903, p. 79; Laws 1909, p. 645.)

**§ 1370. Compromise of Taxes in Certain Cases.**

Sec. 21. The public administrator with the consent of the state treasurer and the attorney general, expressed in writing, is authorized to enter into an agreement with the executor, administrator, or trustee of any estate therein situate, in which remainders or expectant estates have been of such a nature or so disposed and circumstanced that the taxes therein were held not presently payable or where the interests of the legatees or devisees are not ascertainable under the provisions of this act, and to compound such taxes upon such terms as may be deemed equitable and expedient and to grant discharges to said executors, administrators, or trustees upon the payment of the taxes provided for in such composition, provided, however, that no such composition shall be conclusive in favor of said executors, administrators, or trustees as against the interests of such cestui que trust as may possess either present rights of enjoyment or fixed, absolute, or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto either personally when competent or by guardian. Composition or settlement made or effected under the provisions of this section shall be executed in triplicate and one

copy shall be filed in the office of the state treasurer; one copy in the office of the judge of the county court in which the tax was paid; and one copy to be delivered to the executors, administrators, or trustees, who shall be parties thereto. (Laws 1903, p. 79; Laws 1909, p. 645.)

**§ 1371. Receipts for Payment of Tax.**

Sec. 22. Any person shall, upon the payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county, or the state treasurer, or at his option to a copy of a receipt that may have been given by such county treasurer or state treasurer for the payment of any tax under this act, under the official seal of such county treasurer, or state treasurer, which receipt shall designate upon whose estate such tax shall have been paid, by whom, and whether in full of such tax. Such receipt may be recorded in the office of the register of deeds of the county in which such estate is situate in a book to be kept by him for that purpose, which shall be labeled "transfer tax." (Laws 1903, p. 80; Laws 1909, p. 646.)

**§ 1372. Payment to State Treasurer.**

Sec. 23. All taxes levied and collected under this act, less any expenses of collection, the percentage to be retained by the county, and the deduction authorized under this act, shall be paid into the treasury of the state for the use of the state, and shall be applicable to the expenses of the state government and to such other purposes as the legislature may by law direct. (Laws 1903, p. 80; Laws 1909, p. 646.)

**§ 1373. Definition of Terms.**

Sec. 24. The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor, or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors, and shall include all personal property within or without the state. The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein prescribed. The word "decendent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor. The words "county treasurer," "public administrator" and "district attorney" as used in this act shall be taken to mean the treasurer, public administrator and district attorney of the county of the county court having jurisdiction as provided in section 12. (Laws 1903, p. 80; Laws 1909, p. 646.)

**§ 1374. Compromise of Taxes Accruing Prior to This Act.**

Sec. 25. All claims for taxes, under the inheritance tax laws, on account of any transfer by any nonresident decendent, which accrued prior to the passage of this act, may be compounded, settled, and adjusted by the attorney

general, subject to the approval of the governor and tax commission, upon such terms as may by them be deemed equitable and for the best interests of the state. (New section in effect July 3, 1911; Laws 1911, p. 647.)

NOTE.—A statute was enacted and took effect June 21, 1911, conferring upon the tax commission certain powers and duties relative to the administration and enforcement of inheritance taxes: Laws 1911, pp. 524, 525. And a statute took effect July 1, 1909, providing for the appointment by the county court to be known as the public administrator: Laws 1909, p. 647. Special administrators and special administration in the matter of inheritance taxes: Laws 1907, pp. 584, 585. Appointees of attorney general in the matter of enforcing inheritance taxes: Laws 1907, pp. 51, 52.

# CHAPTER LX.

## WYOMING STATUTE.

*(Laws of 1903, pp. 95-100; Compiled Statutes (1910), pp. 646-651.)*

- § 1375. Transfers Subject to Tax—Rates—Exemptions.
- § 1376. Estates for Years or for Life and Remainders.
- § 1377. Time for Payment—Bond—Interest.
- § 1378. Collection of Tax by Executor.
- § 1379. Sale of Property to Pay Tax.
- § 1380. Payment to County Treasurer—Receipts and Vouchers.
- § 1381. Statement to County Treasurer of Taxable Transfers.
- § 1382. Refund of Tax When Debts Proved After Distribution.
- § 1383. Transfer of Stocks or Loans by Foreign Executor.
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- § 1385. Appraisers and Appraisement.
- § 1386. Appraiser Taking More Than Regular Fees—Penalty.
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- § 1392. Custody and Use of Taxes Collected.
- § 1393. Payment to State Treasurer—Receipts and Reports.
- § 1394. Copies of Receipts to be Furnished—Lien of Tax.

### § 1375. Transfers Subject to Tax—Rates—Exemptions.

Sec. 1. All property, real, personal and mixed, which shall pass by will or by the intestate laws of this state from any person who may die seised or possessed of the same, while a resident of this state, or if decedent was not a resident of this state at the time of his death, which property or any part thereof shall be within this state or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled in possession or expectation, to any property or income thereof, shall be and is subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the state, and all heirs, legatees and devisees, administrators, executors, and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son or the husband of the daughter or any child or children adopted as such in conformity with the laws of the state of Wyoming, or to

any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, in every such case the rate of tax shall be two dollars on every hundred dollars of the clear market value of such property received by each person, and at and after the same rate for every less amount; provided, that the sum of ten thousand dollars of any such estate shall not be subject to any such duty or taxes, and that only the amount in excess of ten thousand dollars shall be subject to the above duty or tax. In all other cases the rate shall be as follows: On each and every hundred dollars of the clear market value of all property five dollars and at the same rate for any less amount; provided, that an estate in the above case which may be valued at a less sum than five hundred dollars shall not be subject to any such duty or tax. (Laws 1903, p. 95; Comp. Stats. (1910), p. 646.)

**§ 1376. Estates for Years or for Life and Remainders.**

Sec. 2. When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother, sister, the widow of the son, husband of the daughter, or a lineal descendant during the life or for a term of years and remainder to the collateral heir of the descendant, or the stranger in blood or to the body politic or corporate at their decease, or on the expiration of such term, the said life estate or estates for a term of years shall not be subject to any tax and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years, the tax prescribed by this act on the remainder shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon shall be and remain a lien on said property until the same is paid; provided, that the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax elect not to pay the same until they shall come into the actual possession or enjoyment of such property; then, in that case said person or persons or body politic or corporate shall give a bond to the people of the state of Wyoming, in a penalty three times the amount of the tax arising upon such estate with such sureties as the district judge may approve, conditioned for the payment of the said tax, and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of said property, which bond shall be filed in the office of the county clerk of the proper county; provided, further, that such person shall make a full, verified return of said property to said district judge, and file the same in his office within one year from the death of the decedent, and within that period enter into such securities and renew the same each five years. (Laws 1903, p. 96; Comp. Stats. (1910), p. 646.)

**§ 1377. Time for Payment—Bond—Interest.**

Sec. 3. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and interest at the rate of six per cent per annum shall be charged and collected thereon

for such time as said taxes are not paid; provided, that if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per cent shall be allowed and deducted from said tax, and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section two of this act for the payment of said tax, together with interest. (Laws 1903, p. 96; Comp. Stats. (1910), p. 647.)

#### § 1378. Collection of Tax by Executor.

Sec. 4. Any administrator, executor or trustee having any charge or trust in legacies or property for distribution subject to the said tax shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy of property subject to tax to any person until he shall have collected the tax thereon, and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator or trustee, before paying the same shall deduct said tax therefrom and pay the same to the county treasurer for the use of the state, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the said payment of said legacies might be enforced; if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of his accounts to make an apportionment if the case requires it of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require. (Laws 1903, p. 97; Comp. Stats. (1910), p. 647.)

#### § 1379. Sale of Property to Pay Tax.

Sec. 5. All executors, administrators, and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled to do by law, for the payment of debts for their testators and intestates, and the amount of said tax shall be paid as hereinafter directed. (Laws 1903, p. 97; Comp. Stats. (1910), p. 647.)

#### § 1380. Payment to County Treasurer—Receipts and Vouchers.

Sec. 6. Every sum of money retained by any executor, administrator or trustee, or paid into his hands for any tax on any property, shall be paid by him within thirty days thereafter to the treasurer of the proper county, and the said treasurer, or treasurers shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of said payments, one of which receipts he shall immediately send to the state treasurer whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it



shall be a proper voucher in the settlement of his accounts, but the executor, administrator or trustee shall not be entitled to credit in his accounts or be discharged from liability for such tax unless he shall produce a receipt so sealed and countersigned by the treasurer and a copy thereof certified by him. (Laws 1903, p. 97; Comp. Stats. (1910), p. 648.)

**§ 1381. Statement to County Treasurer of Taxable Transfers.**

Sec. 7. Whenever any of the real estate of which any decedent may die seised shall pass to any body politic or corporate, or to any person or persons, or in trust for them, or some of them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof in writing to the treasurer of the county where said real estate is situated, within six months after they undertake the execution of their duties, or if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge. (Laws 1903, p. 97; Comp. Stats. (1910), p. 648.)

**§ 1382. Refund of Tax When Debts Proved After Distribution.**

Sec. 8. Whenever debts shall be proved against the estate of the decedent after distribution of legacies from which the inheritance tax has been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a due proportion of the said tax shall be repaid to him by the executor or administrator, if the said tax has not been paid into the state or county treasury, or by the county treasurer if it has been so paid. (Laws 1903, p. 98; Comp. Stats. (1910), p. 648.)

**§ 1383. Transfer of Stocks or Loans by Foreign Executor.**

Sec. 9. Whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this state standing in the name of decedent, or in trust for decedent, which shall be liable to the said tax, such tax shall be paid to the treasury or treasurer of the proper county on the transfer thereof; otherwise the corporation making such transfer shall become liable to pay such taxes. (Laws 1903, p. 98; Comp. Stats. (1910), p. 648.)

**§ 1384. Refund of Tax Paid Erroneously.**

Sec. 10. When any amount of said tax shall have been paid erroneously to the state treasurer it shall be lawful for him on satisfactory proof rendered to him by said county treasurer of said erroneous payments to refund and pay to the executor, administrator or trustee, person or persons, who may have paid any such tax in error, the amount of such tax so paid; provided, that all applications for the repayment of said tax shall be made within two years from the date of said payment. (Laws 1903, p. 98; Comp. Stats. (1910), p. 648.)

**§ 1385. Appraisers and Appraisement.**

Sec. 11. In order to fix the value of property of persons whose estate shall be subject to the payment of said tax, the district judge, on the application of any persons interested in the estate, including the state, or upon his

own motion, shall appoint some competent person as appraiser as often as, or whenever occasion may require, whose duty it shall be forthwith to give notice by mail to all persons known to have or claim an interest in such property, and to such persons as the district judge may by order direct, of the time and place at which he will appraise such property, and at such time and place to appraise the same at a fair market value, and for that purpose the appraiser is authorized by leave of the district judge to use subpoenas for and to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make a report thereof and of such value in writing to the district court with the depositions of the witnesses examined and such other facts in relation thereto as the district court may by order require to be filed in the office of the clerk of said district court, and from this report the said district court shall forthwith make an order and fix the then cash value of all estate, annuities and life estates or terms of years growing out of said estate, and the tax to which the same is liable, and shall immediately give notice by mail to all parties known to be interested therein. Any person or persons dissatisfied with the appraisement or assessment may appeal therefrom to the district court of the proper county within sixty days after the making and filing of such appraisement or assessment, on giving good and sufficient security to the satisfaction of the district judge to pay all costs together with whatever taxes that shall be fixed by the district court. The said appraiser shall be paid by the county treasurer out of any funds he may have in his hands on account of said tax, on the certificate of the district judge at the rate of three dollars per day for every day actually and necessarily employed in said appraisement together with his actual and necessary traveling expenses, and the witnesses subpoenaed by said appraiser shall be paid such fees as now provided by law. (Laws 1903, p. 98; Comp. Stats. (1910), p. 649.)

**§ 1386. Appraiser Taking More Than Regular Fees—Penalty.**

Sec. 12. Any appraiser appointed by this act who shall take any fees or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors he shall be fined not less than two hundred and fifty dollars, nor more than five hundred dollars, and imprisoned not exceeding ninety days, and in addition thereto the district judge shall dismiss him from such service. (Laws 1903, p. 99; Comp. Stats. (1910), p. 649.)

**§ 1387. Jurisdiction of District Court.**

Sec. 13. The district court in the county in which the real property is situated, of the decedent who was not a resident of the state, or in the county of which the deceased was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the district court first acquiring juris-

diction hereunder shall retain the same to the exclusion of every other. (Laws 1903, p. 99; Comp. Stats. (1910), p. 649.)

**§ 1388. Proceedings to Enforce Tax.**

Sec. 14. If it shall appear to the district court that any tax accruing under this act has not been paid according to law, it shall issue a summons summoning the persons interested in the property liable to the tax to appear before the court on a day certain not more than three months after the date of such summons, to show cause why said tax should not be paid. The process, practice and pleadings and the hearing and determination thereof, and the judgment in said court in such cases, shall be the same as those now provided or which may hereafter be provided in probate cases in the district courts in this state, and the fees and costs in such cases shall be the same as in probate cases in the district courts of this state. (Laws 1903, p. 99; Comp. Stats. (1910), p. 649.)

**§ 1389. Notice to County Attorney of Unpaid Taxes.**

Sec. 15. Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the persons interested in the property liable to pay said tax to pay the same, he shall notify the county attorney of the proper county, in writing, of such refusal to pay said tax, and the county attorney so notified, if he has proper cause to believe a tax is due and unpaid, shall prosecute the proceeding in the district court in the proper county, as provided in section fourteen of this act for the enforcement and collection of such tax, and in such case said court shall allow as costs in the said case such fees to said attorney as it may deem reasonable. (Laws 1903, p. 99; Comp. Stats. (1910), p. 650.)

**§ 1390. Statement to County Treasurer of Delinquent Taxpayers.**

Sec. 16. The clerk of the district court of each county shall every three months make a statement in writing to the county treasurer of the county of the property from which, or the party from whom he has reason to believe a tax under this act is due and unpaid. (Laws 1903, p. 99; Comp. Stats. (1910), p. 650.)

**§ 1391. Record of Estates to be Kept by County Clerk.**

Sec. 17. The county commissioners of each county shall furnish to each county clerk a book in which he shall enter the returns made by appraisers for cash value of annuities, life estates and terms of years and other property fixed by the district court in his county and the tax assessed thereon, and the amounts of any receipts for payment thereof filed with him, which book shall be kept in the office of the county clerk as a public record. (Laws 1903, p. 100; Comp. Stats. (1910), p. 650.)

**§ 1392. Custody and Use of Taxes Collected.**

Sec. 18. The county treasurer of each county shall keep all money collected under the provisions of this act in a separate and special fund to be expended under the direction of the county commissioners of each county, for the sole

purpose of the permanent improvement of the county road. Such roads shall not be built within the corporate limits of any city or village, but may begin at the limit of any city or village and extending therefrom in the direction most traveled by the public, to be determined upon by the said county commissioners; provided, that such improvements may be made from the limit of any city of the metropolitan or first class and through a city of the second class or village, where the road so determined upon to be improved is a main road between the county and such city of the metropolitan or first class. All contracts for such permanent improvements shall be let by the said board, by competitive bids after the plans and specifications therefor drawn by the county surveyor or engineer have been filed with the county clerk of each respective county. All bids for the construction of such roads shall be deposited with the county clerk of the respective counties and opened by him in the presence of the county commissioners, then filed with the county clerk. All such permanent roadbeds shall not be less than twelve feet, nor more than sixteen feet in width and shall be constructed of the most durable and approved material and the remaining part of said road shall be constructed at one side of the said permanent part and be used as a dirt road; provided, that it shall be lawful for the county commissioners of any county having a population of not more than thirty thousand, to use said fund in the manner herein provided for the improvement of any grade, bridge, cut, fill, or dirt road leading into any city or village within said county; provided, that all money hereafter paid by the various county treasurers to the state treasurer, under the provisions of this chapter shall be, upon proper vouchers signed by the county clerk and county treasurer, paid back to the said county from which said tax was received and said money when so refunded by the state treasurer shall be placed in the special fund heretofore mentioned in each county and shall be expended in like manner and for like purposes as hereinabove specified. (Laws 1903, p. 100; Comp. Stats. (1910), p. 650.)

**§ 1393. Payment to State Treasurer—Receipts and Reports.**

Sec. 19. The treasurer of each county shall collect and pay the state treasurer all taxes that may be due and payable under this act, who shall give him a receipt therefor, of which collection and payment he shall make a report under oath to the state auditor on the first Mondays in March and September of each year, stating for what estate paid, and in such form and containing such particulars as the auditor may prescribe, and for all said taxes collected by him and not paid to the state treasurer by the first day of October and April of each year he shall pay the interest at the rate of ten per cent per annum. (Laws 1903, p. 100; Comp. Stats. (1910), p. 650.)

**§ 1394. Copies of Receipts to be Furnished—Lien of Tax.**

Sec. 20. Any person or body politic or corporate, shall upon the payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county or the copy of the receipt at his option, that may have been given by said treasurer for the payment of any tax under this act, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any deceased may have died seised, said tax has

been paid and by whom paid, and whether or not it is in full of said tax, and said receipt may be recorded in the clerk's office of said county in which the property may be situated in the book to be kept by said clerk for such purpose. The lien of the inheritance tax provided herein shall continue until the said tax is settled and satisfied; provided, that said lien shall be limited to the property chargeable therewith; and provided further, that all inheritance taxes shall be sued for within five years after they are due and legally demandable; otherwise they shall be presumed to have been paid, and such lien shall be removed. (Laws 1903, p. 100; Comp. Stats. (1910), p. 651.)

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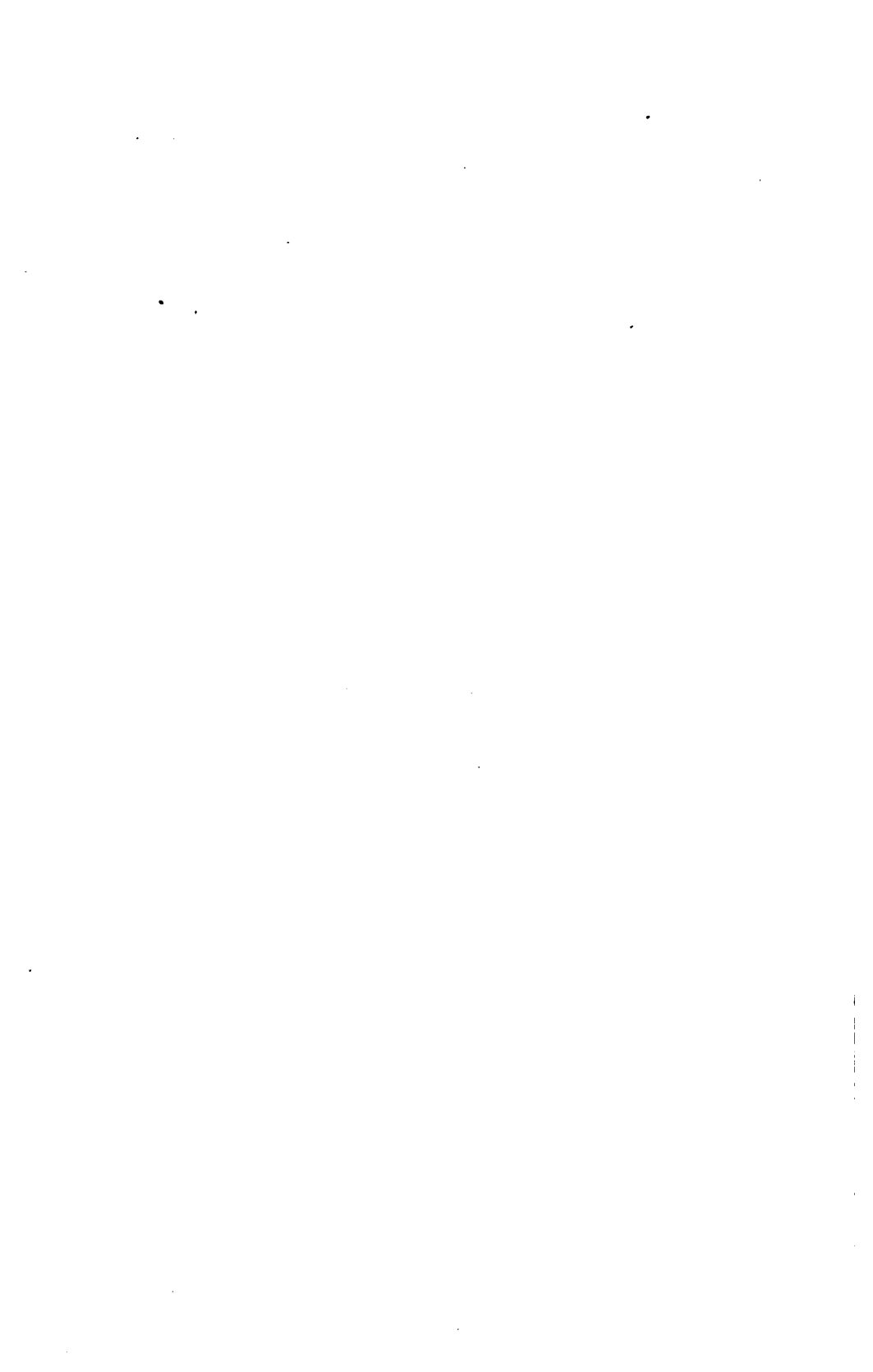
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